



REPORT
OF THE
COMMISSION OF INQUIRY

*(INQUIRY ON THE ADMINISTRATION OF
DALMIA-JAIN COMPANIES)*



GOVERNMENT OF INDIA
MINISTRY OF COMMERCE & INDUSTRY
DEPTT. OF COMPANY LAW ADMINISTRATION

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BHARAT UNION AGENCIES LTD.

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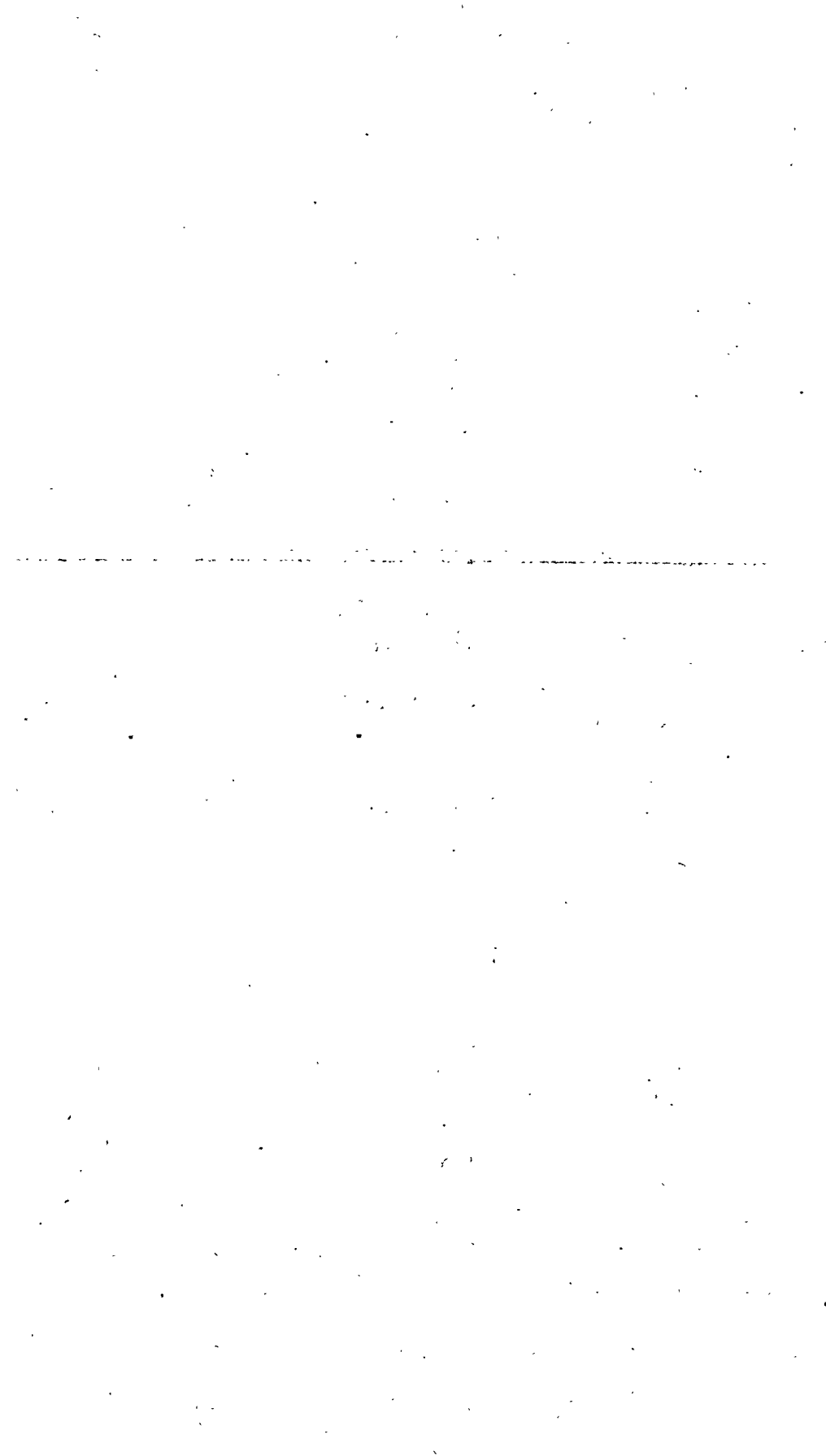
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Shapurji	D.C.	R.I.
Madhowji	S.K.G. (cum Lauriya farm)	R.Q.
Bennett Coleman		
Civil Military	Universal Bk.	D.R.L.
Bharat Journals	Kharkhari	D.P.W.
Kohli Sahni	Bh. Fire	Bharat Collieries
Bharat Insurance	P. & M. (cum D.J.)	Maheshpur
P.N. Bank	Lesco Chemicals	D.J. Collieries
N.I. Trust	Orissa Cement	Bharat Bank
D.J.A.		N.S. Deposit
Allenberry		Law Journals
Allen Motors		New Central Jute
Oxy.		Lothian Jutes
D.C.P.M.		
D.I.	Sd/-	Albion Jute
G.W. Bank		
L.E.S.	1. R. Dalmia's	Govan Bros. (R) Ltd.
D.D.C. (cum D.J.)	2. J. Dalmia's	G.B. Ltd.
D. Maktg.	3. S. P. Jain	
Raj Invtt.		
Jodhpur Cement (cum allied & Co.)		



CHAPTER I

INTRODUCTORY

Appointment of the Commission and its Officers

This Commission of Inquiry was appointed by the Central Government under notification S.R.O. No. 2993 of the Ministry of Finance (Department of Economic Affairs) on the 11th December, 1956 under the Commission of Inquiry Act (No. LX) of 1952 to inquire into and report on the administration of nine Companies, the nature and extent of the control direct and indirect exercised over such companies and firms or any of them by Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Shriyans Prasad Jain, their relatives, employees and persons concerned with them and other matters mentioned in clause 1 of the notification.

The names of the nine Companies are as follows :

1. Dalmia Jain Airways Ltd.
2. Dalmia Jain Aviation Ltd.
(now known as Asia Udyog Ltd.)
3. Lahore Electric Supply Company Ltd.
(now known as South Asia Industries Ltd.)
4. Shapurji Broacha Mills Ltd.
5. Madhowji Dharamsi Manufacturing Company Ltd.
6. Allenberry & Co. Ltd.
7. Bharat Union Agencies Ltd.
8. Dalmia Cement and Paper Marketing Co. Ltd.
(now known as Delhi Glass Works Ltd.)
9. Vastra Vyavasaya Ltd.

The Commission was also empowered to add other Companies under clause 1(2) of the notification. The name of the company added and included in this inquiry by the Commission by its order dated 14th November, 1958 is Dalmia Dadri Cement Limited.

The Commission when appointed on 11-12-1956 consisted of the following persons :—

Shri Justice S. R. Tendolkar, Judge of the High Court at Bombay	<i>Chairman.</i>
Shri N. R. Mody of Messrs A. F. Ferguson & Co., Chartered Accountants	<i>Member.</i>
Shri S. C. Chaudhuri, Commissioner of Income Tax	<i>Member.</i>

A copy of the notification is appended as Appendix A. On account of ill-health Justice Tendolkar resigned on 19-12-1957 and his resignation was accepted by the Government in the early part of January, 1958. He died on 27th March, 1958.

The present Chairman was appointed on 28-8-1958 under notification No. 1781 of that date issued by the Ministry of Commerce and Industry (Department of Company Law Administration) but he was not able to take over effective charge till 18th September, 1958 because of another enquiry on which he was then engaged.

Shri V. R. Sen, a retired judge of the Madhya Pradesh High Court, was appointed a member of the Commission by the Central Government under notification S.R.O. 2713. He joined the Commission on 1st November, 1960.

The services of Shri N. K. Petigara of Messrs Mulla & Mulla and Craigie, Blunt and Caroe, Solicitors and Notaries of Bombay were placed at the disposal of the Commission to assist in its work as a Solicitor.

The services of Shri R. M. Bhandari of the Department of Company Law Administration and of Shri P. L. Mukerjia, Assistant Commissioner of the Income Tax Department, Central Board of Revenue, were also placed full time at the disposal of the Commission.

The first Secretary of the Commission was Shri S. N. Lahiri. He resigned on 4-5-1957. The next Secretary was Shri P. S. Nadkarni. He assumed charge on 4-5-1957 as Secretary in addition to his own duties as Deputy Secretary, Ministry of Finance (Department of Economic Affairs).

Shri Nadkarni worked as Secretary till 9-8-1958. Shri Bhandari took charge from Shri Nadkarni on 9-8-1958 and was appointed Secretary on 1-10-1958. He left the Commission on 17th March, 1960 and was succeeded by Shri P. L. Mukerjia.

CHAPTER II

THE FORMAT OF THE REPORT

In view of the wide ground that we have had to cover in the inquiry we have deemed it advisable to divide the report into a number of volumes.

The first volume gives a history of the Commission and a general survey of our task. At the end of this volume we will summarise our conclusions and apportion the responsibility for various acts in general terms.

The second volume deals with the Dalmia Jain Group and the issue of a dissolution of the Group on 31-5-1948 that Shanti Prasad Jain and J. Dalmia pleaded.

The remaining volumes deal with the various companies. We have grouped some of them together. Volumes III and IV deal with Allenberry, D. J. Airways and D. J. Aviation. We have considered them together and have divided the matters relating to them into three periods : (1) the pre-Joint Venture period; (2) the Joint Venture period; and (3) the Post-Joint Venture period.

The first two periods concern Allenberry and D. J. Airways. They are dealt with in Volume III. The pre-Joint Venture period is in Part 1 of this volume and the Joint Venture period in Part 2.

Volume IV covers the Post-Joint Venture period and brings in D. J. Aviation in addition to Allenberry and D. J. Airways. This volume is split up into five parts. Part 1 deals with certain frauds in the Disposal Vehicles and Stores sections of Allenberry, and Part 2 with frauds in the Drum and Pipe Line sections of Allenberry's business; Part 3 covers D. J. Aviation; Part 4 deals with certain inter-company investments and transfers of the funds and shares of D. J. Airways; and Part 5 with the liquidation of D. J. Airways and the destruction of its books.

D.C.P.M. has a volume to itself—Volume V. In many ways it is a key company because it was used as a clearing house for all the scheduled companies and many others. The funds of these companies and some of the personal funds of the members of the D. J. Group passed through its books. It also acted as a screen for many of the frauds. Several of the malpractices that we have discovered could not have been brought about in the way they were without D.C.P.M. there to screen and hide the real nature of the transaction.

The S.S.B. Mills, the M.D.M. Co., B.U.A. Ltd. and V. V. Ltd., are examined in Volume VII; while Volume VIII covers L.E.S. Co. and D.D.C.

CHAPTER III

PROCEDURE

Every Commission of Inquiry feels difficulty on the score of procedure. That is so even in England. Unfortunately that is inevitable because Commissions are so varied in their scope, personnel and purposes that it would be impracticable to prescribe a rigid procedure for all.

Under Section 12 of the Commissions of Inquiry Act the appropriate Government may by Notification in the Official Gazette make rules to carry out the purposes of the Act. When this Commission was appointed no rules of procedure had been framed by the Central Government. The only Rules which had been framed under Section 12 of the Act and were in force in December 1956 related to the appointment and functions of assessors and to service of summons.

On 7th May, 1960 the Central Government made and published rules called the Central Commissions of Inquiry (Procedure) Rules 1960.

As there were no rules of procedure before 7-5-1960 the Commission framed certain rules to regulate its procedure. The power of the Commission to frame rules of procedure is derived from Section 8 of the Act which is in the following terms :—

“Procedure to be followed by the Commission—The Commission shall subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members.”

In framing rules to govern proceedings before it, the Commission took into consideration the fact that it had a double duty to discharge. It had to collect material and information which would be relevant for purpose of the inquiry. It had also to reach conclusions on material that might be placed by persons interested in the inquiry and by Government. It had to combine the function of both investigation and adjudication. This dual aspect of our task was endorsed by the Supreme Court in CA No. 455 of 1957 *Ramkrishna Dalmia versus Shri Justice S. R. Tendolkar* and others. There was a public hearing of the Commission on 30th September, 1958 to settle the procedure of the Commission. Counsel were heard and thereafter rules were drawn up by the Commission. In its Order dated 1st October, 1958 the Commission has stated at length its reasons for the rules and procedure formulated by it. These rules are the essence of the rules of fair play or what is in more technical terms called “natural justice”.

The services of officers were placed at our disposal and one of our duties was to direct their work and make an investigation with their assistance.

Until that was done it was not possible to decide whether there was material to justify even *prima facie* adverse conclusions against the companies and the individuals whose conduct we were directed to investigate and report upon. This meant careful sifting of trunk load of records consisting of papers, reports and accounts. It was a *stupendous* task as no assistance was forthcoming from persons and companies who maintained these records.

We may point out that the Special Police Establishment in response to our notice produced records seized by it during a search. Documents were produced in some cases by persons and companies to whom notices were issued under Section 4(b) of the Act.

The affairs of the companies which had to be investigated covered a large number of years. The terms of reference set out in the notification appointing the Commission covered a wide field. They had the effect of converting our inquiry in effect into a series of separate trials.

The terms of reference required the Commission to investigate into the affairs of 9 Companies set out in the Schedule to the Notification and also required up to add such other companies and firms :

- (1) "connected with the companies referred to in the schedule", and
- (2) whose affairs ought to be investigated and inquired into;
- (3) "In connection with or arising out of the inquiry into the affairs of the scheduled companies."

This enabling clause is not as wide as it appears because of the qualifications with which it is hedged. In the end we were able to add one company to the scheduled companies. But it gave us considerable anxiety and added to our task of investigation.

Exercise of Statutory Powers by the Commission

The Commissions of Inquiry Act has vested the Commission with drastic powers such as search and seizure of documents. We were reluctant to use them and did the barest minimum consistent with our duty to put any person to inconvenience or embarrassment. To that end, we first invited persons who had any knowledge of the matters into which we were directed to inquire either to send us the information voluntarily or to allow one of our officers to record their statements. But this did not work. So we next used our powers under Section 5(2) of the Act and directed a large number of persons to answer a series of our questions in order not to put them to the inconvenience of having to attend as witnesses and be examined on oath; also, when we wanted a document we afforded them an opportunity under Section 4(b) of sending it to us without compelling them to appear in person. We issued 380 notices under these two Sections.

The response here was better. But still we ran into considerable evasion and what we may call "non-cooperation". That left us with no alternative but to summon a number of persons as witnesses and require them to testify before us on oath. We examined 10 persons as witnesses during the stage of investigation before issuing statement of matters.

Search.—We were very reluctantly compelled to exercise our powers of seizure in one case. This was on 17th March, 1960. The fact that we waited

till that date though we had been issuing notices and reminders from 1957 onwards is an indication of our restraint.

Public Hearings

The question of public hearings was given careful consideration. After much thought we decided that it would be proper to hold the second stage of our inquiry (the one that we have called, for want of a better word, the trial stage) in public. We reached this decision because of the precedents in India, England and the United States of America; and also on grounds of public policy.

This raised another problem. It is usual to conduct the first, or investigation stage of this kind of inquiry in private. But evidence is not necessarily recorded on oath at that stage. The more usual rule is either to accept a statement in writing from a person conversant with the facts or to have it recorded, *not on oath* by some one attached to the Commission. A selection is then made and then only a few are summoned to depose at the second stage.

But this presupposes that persons will volunteer information and either send statements in writing or be willing to have them recorded by an officer of the Commission. The system becomes unworkable when a person is not prepared to come forward voluntarily and has to be summoned as a witness and be examined on oath. We, therefore, had to choose between two methods of procedure in the case of this kind of witness. We had no power to delegate the authority to compel attendance and to conduct the examination of witnesses. So we were compelled to do this as a Commission. We, therefore, had either to examine a witness on oath in private and use his evidence at the second stage without a public examination after giving opportunity for his cross-examination or to recall the witness and examine him afresh on oath in public. We decided against private examination for several reasons.

In the first place examination of a witness on oath can be done by the Commission alone and no one else. Therefore, the time of the Commission would have been wasted in re-recording in public what had already been said on oath in private.

Secondly, calling a witness twice merely to have him repeat on oath what he had already stated on oath seemed unnecessary, especially as it was our constant endeavour not to subject any person with whom we had to deal to more than the minimum of inconvenience.

Thirdly, Ramkrishna Dalmia, J. Dalmia and Shanti Prasad Jain objected to examination on oath in private. We considered the request fair and so conceded it. But that at once destroyed the private nature of the questioning and made the examination analogous to that of a public trial, a part of which is held in camera. Now of course, all courts have a discretion to hear a part of the evidence in camera or even the whole of it. But the discretion has to be exercised judicially and a trial proceeds in camera only for very special reasons. As there were no special reasons here, and as our basic policy was to hold the second stage of the inquiry in public, we decided that every examination on oath should be in public and that, as far as possible, there should be only one examination except in so far as a witness was wanted for cross-examination or further cross-examination.

Had we received proper co-operation from the beginning instead of repeated obstruction, the public examination of witnesses at the first stage might have been avoided, and the inquiry could have proceeded in a normal way. But in view of the very evident determination to thwart and obstruct the inquiry our hands were forced. We were very patient but obviously could not fold our hands and do nothing and allow interested persons to flout and defy the authority of the Commission.

The Commission, however, throughout the investigation and inquiry was scrupulously fair and applied the rules of natural justice. After we had marshalled our facts, we drew up a definite set of what may be termed 'accusations' or 'charges' and went out of our way to furnish the fullest 'particulars' that we could much more detailed and informative than is usual in a Court of Law. We afforded those that were likely to be affected in a major way the fullest opportunity of meeting these 'charges' and either explaining them or refuting them. We allowed these persons to be represented by Counsel, allowed them to cross-examine witnesses and to put in written statements. We also allowed them to call witnesses in their own defence and heard their arguments.

We may add here that we refrained from calling them 'charges' because of the susceptibilities of those to whom they were addressed. We were asked not to use that word; so we resorted to the clumsy formula, "Statements of Matters that require elucidation or reply", which in turn was compressed to "Statements of Matters".

Statements of Matters were issued by the Commission on the following dates to seventy persons and companies concerned with the inquiry :—

Name of the Company	Statement of Matters issued on
Allenberry & Co. Ltd.	11-12-1959
D. J. Airways Ltd.	11-12-1959
D. J. Aviation Ltd.	11-12-1959
S. S. B. Mills Ltd.	1-2-1960
M. D. M. Co. Ltd.	1-2-1960
D. D. C. Ltd.	1-2-1960
V. V. Ltd.	1-2-1960
D. C. P. M. Co. Ltd.	8-4-1960
L.E.S.C.O.	28-5-1960
B. U. A. Ltd.	28-5-1960
Allenberry & Co. (Drum & Pipe Section)	28-5-1960
Group Statement	28-5-1960

Two months time was given for filing the written statements but that was extended at the request of the applicants.

At this stage we may refer to the submissions made by Shri Misra on 5th December, 1960 with reference to the rules framed by the Central Government on 7th May, 1960 and published on 14th May, 1960. According to him the rules made a radical and important departure which would require revision of our procedures and he said that these revisions would affect the matter of the written statements that we had called for. We rejected the submissions and we have given full reasons in our Order, dated 8th December, 1960.

It may also be pointed out that the procedure formulated by the Commission in the Orders, dated 1st October, 1958 and 8th April, 1959 was challenged in a writ petition by Allenberry and R. Dalmia. The challenge failed. The learned judges observed—

“The Commission has pointed out in its orders which are impugned that it will follow the procedure which is fair to every one and which will conform to be rules of natural justice. The petitioners should be more than satisfied that the Commission proposes to follow such a procedure.”

The last written statement was that of Shanti Prasad Jain in the Group Statement of Matters. This was filed on 25th April, 1961. V. H. Dalmia's statement was filed on 3rd February, 1961 after the expiry of the time. We have, however, taken these on record.

The Commission, after consideration of the Statements of Matters and written statements, drew up a large number of 'Issues' and announced them on 9th August, 1961 at a public hearing.

Issues : Certain objections were raised to the 'Issues'. Arguments were heard and in some cases we amended the issues. We do not propose to record our findings against each issue. These issues were framed with the object of pin-pointing the disputed matters of fact. In arriving at our conclusions, we have taken into consideration these issues along with our statements of matters and written statements.

Production of evidence and the Central Government : Rule 3 of the Rules framed on 7th May, 1960, by the Central Government requires the Commission to give opportunity to the Central Government to produce evidence. In our Order, dated 8th December, 1960, we held—

“Rule 3(a) is confined to those who have filed statements and the opening sentences of Rule 3 are clear that the Central Government may adduce its evidence first. In our opinion that means that the Central Government is entitled to adduce evidence even if it has not filed a statement under Rule 2.”

A notice was issued to the Central Government by the Commission in terms of Rule 3. The Central Government informed us that it has no evidence to tender.

Witnesses : Ten witnesses were examined during the investigation stage, and one witness was examined by the Commission on 29-9-61 after the issues were framed.

Thereafter witnesses were examined on behalf of J. Dalmia and Shanti Prasad Jain. J. Dalmia examined 11 witnesses and Shanti Prasad Jain 29 witnesses. The examination of witnesses was concluded on 20-3-1962.

Arguments : Arguments were heard on the issues relating to the dissolution at Bombay from 26th February to 6th March, 1962. Arguments on all other points were heard between 20th March till 19th April, 1962.

Article 20(3) : There have been frequent references to this Article in the proceedings before us and the courts. This was first raised by R. Dalmia, J. Dalmia, Shanti Prasad Jain, Shriyans Prasad and Shital Prasad in their writ petitions. The objection based on Art. 20(3) is repeated in several written statements.

The Commission in its Order, dated 8-4-1959, held that Art. 20(3) cannot be invoked by any witness who appears before us. On this point, the Punjab High Court, in its decision referred to earlier, held—

“Article 20(3) can be evoked in the proceedings before the Commission by witnesses who appear before it if and when the occasion arises. As that occasion has not been shown to have arisen so far as the present petitioners are concerned, no order or direction is necessary at this stage in this behalf.”

The Union of India filed an appeal against the decision of the High Court in respect of Art. 20(3). The appeal is pending.

But no occasion arose for refusing the protection of Article 20(3) to any witness before the decision of the Punjab High Court, and after that decision of course the decision of the Court was accepted and followed. So no prejudice has been caused to any person on this account.

Registrar

We have commented on the conduct of N. D. Bhatia, the Accounts Officer, Regional Director's Office, Madras. Rule 9 of the Commissions of Inquiry (Procedure) Rules, 1960 were not in force when we drew up our Statement of Matters on 11-12-1959 in respect of the affairs of D. J. Airways. We brought his conduct to the notice of the Government. The Government informed us that disciplinary action had been taken against Bhatia. It was not necessary, therefore, to issue a fresh notice to him in terms of Rule 4.

CHAPTER IV

IMPEDED PROGRESS—AND REASONS THEREFOR

The affairs of the scheduled companies called for an investigation into their affairs for a period of over 10 years commencing from the year 1945. The records of all the companies would have been of great help to the Commission. Unfortunately in the case of the following important companies, Dalmia Jain Airways, M.D.M., S.S.B., D.C.P.M. and V.V. Limited, they were not available. Nor were the Joint Venture Books of Allenberry produced. The plea was that they were at Dacca. The others were destroyed deliberately by the persons in control in order to thwart any enquiry. Persons who could have explained matters on account of their intimate association deliberately withheld all relevant information.

R. Dalmia did not reply to any of the Statements of Matters. Nor did he produce evidence. He justifies his refusal on the ground that the Commission has no power to ask him to file a written statement.

Others, of whom some held responsible positions, did not reply to the written statement. They are :

Shital Prasad Jain

P. S. Patke

G. Ramchandran

J. P. Jain

N. C. Roy

Rameshwar Prasad Bajoria

Shyam Lal Aggarwal

There are others who have filed written statements but did not submit any reply on the merits. They are :

S. N. Dudani

S. K. Sanghi

S. S. L. Chordia

R. L. Chordia

V. S. Chordia

B. L. Chokhani

G. L. Chokhani

M. L. Sodhani

Our progress has not been as swift as we would have liked. There have been repeated petitions before the High Courts and appeals before the Supreme Court and also applications before the Commission. For some time our proceedings were stayed altogether. On other occasions we felt that it would be undesirable to proceed in certain ways, as the matter was sub judice, even though there was no order of stay.

On 10th January 1957, the Commission decided to issue notices to the persons named in the notification and certain other persons and companies. Notices were accordingly issued on 15-1-57 stating that a preliminary meeting of the Commission will be held on 28-1-57. On the same day, a notice was issued to the Special Police Establishment to produce the records seized by the Police in November 1953 during a search.

On 28-1-57 Shri Seervai, Counsel for Shanti Prasad Jain and Jaidayal Dalmia informed the Commission that his clients and other parties wanted to take proceedings in the High Court challenging the appointment of the Commission and the validity of the notification and that they would do so before 15th February, 1957. The Commission decided that it would not proceed with the inquiry till the final disposal of the proceedings if a rule *Nisi* was issued by the Court.

On 15-2-57 three petitions were filed in the Bombay High Court challenging the appointment of the Commission on various grounds. In one the petitioner was Ramkrishna Dalmia, in the second the petitioners were Shriyans Prasad Jain and Shanti Prasad Jain and in the third the petitioners were Jaidayal Dalmia and Shanti Prasad Jain. These persons are mentioned in the notification.

The court delivered judgment on 29th April, 1957. The challenge to the notification failed except to the extent that the words "the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment to act as a preventive in future cases" in the last part of Clause 10 were held to be *ultra vires* of the Act. On 10-5-57 leave to appeal was granted by the High Court. Thereafter appeals were filed by Ramkrishna Dalmia, the remaining petitioners and by the Union of India.

On 22-5-57 the Supreme Court issued an order staying proceedings of the Commission for obtaining fresh information or documents from the parties.

On 28th March, 1958 the Supreme Court delivered its judgment. It modified the decision of the Bombay High Court. It held that only the words "*as and by way of securing redress or punishment*" in the last part of the clause 1(10) were *ultra vires*.

Clause 1(10) has to be read as follows as a result of the judgment of the Supreme Court.

"Any irregularities, frauds or breaches of truth or action in disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission and the action which in the opinion of the Commission should be taken."

After a few public hearings at which witnesses were examined and cross-examined another writ petition was filed on 25-6-59 in the Punjab High Court by R. Dalmia and Allenberry & Co. against the order, dated 8-4-59 of the Commission. An application for stay was filed on 26-6-59. At the time of hearing Shri Petigara stated that the Commission would not hold

public hearings on the date from 2-7-59 to 9-7-59 already fixed. In view of the pendency of the proceedings before the Court questioning the procedure of the Commission no public hearings were fixed till the disposal of the Writ Petition.

The petition was decided on 8-10-59. It was dismissed. The Court however held that the parties were entitled to invoke the benefit of Article 20(3) of the Constitution.

The petitioners filed an application for leave to appeal to the Supreme Court on 25-10-59 with a prayer for *ad interim ex parte* stay of proceedings before the Commission. The Court granted leave on 24-11-59. It allowed the petitioners two weeks to apply to the Supreme Court for stay of proceedings and directed the Commission not to examine any witness on oath during this period.

The application for stay to the Supreme Court was made on 9-12-59 and dismissed on 5-1-60.

The petitioners withdrew their appeals on 3-10-60. The appeal of the Union of India in respect of the decision of the Punjab High Court regarding Art. 20(3) of the Constitution is still pending. The effect of the proceedings in the courts was that the pace of progress before Commission was retarded for about 22 months, and 15 days as will appear from the following dates :

- (i) 2½ months between 15-2-57 to 29-4-57
- (ii) 16 months between 22-5-57 to 18-9-58
- (iii) 3½ months between 26-6-57 to 8-10-59
- (iv) 15 days from 24-11-59 to 8-12-59

We will make a brief reference to the subsequent proceedings in court. Numerous applications were made to the Commission by R. Dalmia and some others between 11-4-60 and 4-6-60 raising various objections. These were dismissed. The order of the Commission was passed on 16-6-60. On 24-8-60 R. Dalmia, R. P. Gurha and S. K. Sanghi filed writ petitions in the Punjab High Court against our order, dated 16-6-60.

These petitions were dismissed on 6-3-62. The petition for leave was dismissed on 25-4-62 after hearing the parties.

During the pendency of these petitions, a second writ petition was filed by R. Dalmia on 12-2-62. These were also dismissed on 23-5-62. The Petition for leave was also dismissed.

A petition for special leave to the Supreme Court has been filed by R. Dalmia and will be heard sometime in July 1962. In this petition there is a prayer for *ad interim ex parte* stay. Each time the writ petitions came up for hearing before the Court, a detailed brief had to be prepared (by the Secretary) and the Company Law Department had to be placed in full possession of the facts in order to enable the Government to prepare full affidavits in reply that the procedure of the Court requires.

The attitude of the Commission was that it would not file affidavits but would abide by the decision of the Court. In all the writ petitions, the Union of India was a party and contested the petitions.

The time of commission was occupied on several hearings in hearing applications and a review of technical objections. We will briefly mention the nature of these objections. They related to—

- (a) The constitution of the Commission.
- (b) Lack of jurisdiction to enquire into affairs of Dalmia Jain Airways, Allenberry and certain other scheduled companies in respect of which criminal proceedings were said to be pending in a court of law.
- (c) Lack of jurisdiction to inquire into matters subsequent to 11-12-56, the date on which the Commission was appointed.
- (d) Lack of jurisdiction to inquire into matters before 14-8-52 the date on which the Commissions of Inquiry Act came into force.
- (e) Lack of jurisdiction to inquire into questions relating to evasion of Income-tax.
- (f) Procedure of the Commission : The Commission had no power to call upon the applicants to file written statements.

Similar objections are contained in the written statements of Shanti Prasad Jain including the reply to the Group Statement filed on 25-4-61.

Each separate objection had to be heard and a full order had to be made in view of the intention of the applicants in many cases to take the matter to court. Each order had to be full and "speaking" so that courts would be in possession of the facts and the reasons for our action.

In view of the large numbers of applications, the Commission in its order, dated 16-6-60 observed "We have been flooded with a spate of applications and petitions. We have counted the number from 4-4-59 and find that there are no fewer than 29 of which R. Dalmia has filed 13. There are earlier petitions also but we have not counted those before 4-4-59. This deluge of applications has grown on great that it will now be necessary to number the petitions starting from the earliest. The office will do that. These observations appear to have had little effect on the persons concerned.

On 28-7-61 the Commission issued notices to the effect that issues would be announced on 9-8-61. Immediately after receipt of the notices, R. Dalmia, S. K. Sanghi and R. P. Gurha made a number of applications raising various objections to the validity of the notice, to the proposed meeting of the Commission and the announcement of the issues. Similar objections were made by Bharat Union Agencies and D. A. Patel in their letters, dated 5-8-61 to the Commission. These were dismissed on 9-8-61. The prayer for stay for proceedings was rejected.

More petitions were filed thereafter by R. Dalmia, Allen Berry & Co., Bharat Union Agencies containing several objections.

Counsel was heard in support of these petitions. The objections were over-ruled.

Persistent efforts were made by R. Dalmia and persons and companies under his control and influence to obtain an order for stay both from the Commission and the Courts. On 3-2-1962, an application was filed on

behalf of R. Dalmia by his counsel—M. Alan Davies Q.C., for postponement of arguments and presentation and preparation of our report. After hearing counsel the application was dismissed. The latest attempt to obtain stay was towards the end of May 1962 when the application for special leave to file an appeal before the Supreme Court came up for hearing.

The object of R. Dalmia and the other applicants was clearly to obstruct and delay the work of the Commission in the hope that in the end the enquiry would be abandoned.

At the stage of evidence Shanti Prasad Jain made applications for summoning a large number of witnesses and for production of documents. These applications were disposed of by orders, dated 9-12-61 and 28-12-61. During his evidence Shanti Prasad Jain filed a long application objecting to Shri Petigara cross-examining him. The total number of applications heard by us in 99. Their hearing and disposal involved considerable time of the Commission. No other Commission of Inquiry has had to meet so many legal objections and overcome impediments calculated to defeat the inquiry.

The objections taken in the writ petitions to the validity of the Commission included objections to the appointment of the Chairman and each one of the members. They were all dismissed. We give below the relevant extracts from the order of the Punjab High Court on a few of the objections.

Vivian Bose Chairman

"In my opinion there is no doubt that nomination as Chairman implies nomination as a Member at the same time, since Section 3(2) only contemplates that appointment of a member as Chairman.

I do not consider that this is the natural meaning of the relevant part of the Section, which in my opinion, is merely intended to validate proceedings held in the absence of all the members of the Commission whether by reason of temporary absence of a Member or by the disappearance of the Member—that the implication is that a vacancy is intended to be filled."

V.R. Sen : Member

"I am not prepared to hold that the appointment of Shri V. R. Sen is illegal. . . . I have no doubt whatever that by the time the Commission is in a position to draw up its final report Mr. Sen will clearly have had sufficient opportunity to familiarise himself with the matters in issue."

N.R. Mody : Member

"The appointment of Mr. Mody as a Member of the Commission. . . . was quite clearly and definitely a matter which could and ought to have been made a ground of challenge when the writ petitions were filed in Bombay in 1957. . . . The allegations made in 1960 with the object of disqualifying Mr. Mody as a member of the Commission have not been levelled *bona fide* but are merely part of a protracted campaign for preventing the Commission for completing its task."

N.K. Petigara : Solicitor to Commission

"I consider the Government was fully entitled to appoint Petigara as the Solicitor to the Commission and indeed I consider that all the hours

and months put in by Mr. Petigara from 1953 onwards would have been utterly wasted if any other gentleman who had to familiarise himself with the ramifications of the affairs of the companies from the start had been appointed to assist the Commission.

After all the members of the Commission include two officers of wide judicial experience in the form of an ex-judge of the Supreme Court and an ex-judge of a High Court as well as a Chartered Accountant of high standing and a Commissioner of Income-tax. I do not entertain any fears of their being unduly influenced by the Solicitor to the Commission and I do not consider that there is any substantial basis for such fears on behalf of the petitioners.

. . . . Be that as it may the contents of this letter (letter of Petigara to P. S. Kasbakar, dated 10-9-54) so far as they go do not in any way support the charge of *mala fides* but rather go against such a suggestion."

General objections

"Obviously events which happened before August, 1952 may still be a matter of Public interest today and in my opinion there is nothing whatever in law to stop the Government from setting up a Commission to enquire into such matters.

The enquiry so far as it is concerned with matters mentioned in the report registered in 1953 is not debarred by the provisions of Clause 10 of the Notification.

Statement of Matters not only does not contain any allegations regarding evasion of income-tax but it does not anywhere under any heading even mention the word Income-tax. Questions involving Income-tax may arise in course of enquiry only to the extent that the Income-tax affairs of the Petitioners are involved in the general financial manipulations.

I thus do not consider that the way in which the Statement of Matters has been presented amounts in itself to a contravention of the provisions of 20(3) of the Constitution.

That a partition of interests among members of family would not necessarily and *ipso facto* terminate the existence of a recognisable group of companies.

I have a strong suspicion that they (Sanghi & R. P. Gurha) have only been put up as petitioners for the very purpose of avoiding any objections regarding *res judicata* which would be applicable in the case of R. Dalmia himself.

I do not consider that it is possible at this stage to hold that the appointment of the Commission is invalid by reason of the Provisions of Section 5 of Criminal Procedure Code and Article 14 of the Constitution.

Petitions dismissed with costs."

CHAPTER V

LEGAL OBJECTIONS

We will deal very briefly here with a few of the many legal objections that were raised in the course of the inquiry. All, except the three that we will deal with here, were dealt with by us in numerous orders of a speaking nature. As nearly all those objections were carried to the courts in a long series of writ petitions we will not enumerate them here. Our orders will be found among the records that will be handed over to Government; and the decisions of the courts are public property. But the three objections that we intend to touch on here relate to the subject-matter of our report and as they are general in their character and will affect several of the companies before us we will deal with them very briefly in this volume.

The D. J. Group

It was contented that we had no jurisdiction to inquire either into the activities of the D. J. Group as a group or of its members as individuals. We have dealt with this more elaborately in some of our orders and also in other parts of this report, so all we will say here is that the Notification names 5 persons and directs us to inquire into the nature and extent of their control over the companies under investigation. That control could be either as individuals or as a group, so both the issues are relevant, especially as clause 2(9) of the Notification speaks of a group or groups of persons. So the investigation into the D. J. Group and its activities in relation to these companies is relevant and is required of us.

We need not set out here why we have jurisdiction to inquire into the individual activities of the members of the group in relation to these companies because the Supreme Court has decided that we have.

Courts and Arbitrators

It was argued that we cannot go behind the decisions of the courts and of the arbitrators. We have dealt with this at greater length in another part of our report and have shown that we can and have explained why. We cannot, of course, sit in appeal over the orders of the courts nor can we affect or modify their decisions. But we have the right to analyse them and to examine the facts and the surrounding circumstances to see whether the procedures of the courts were abused and if so how. We have this right in common with every man and woman in the land, and even more so because a statutory duty has been cast on us to make such an examination.

Income-tax

Much the same kind of objection was taken in the case of the income-tax matters on which we have touched. Here again, of course, we cannot upset an assessment or vary it. We are not courts of appeal or revision. But it is our duty to examine whether the income-tax laws were evaded or avoided in the administration of the companies before us, and if so to point out how.

One of our terms of reference requires us to report on the extent and nature of the personal gains made by any individual, or by any group or groups of persons, by reason of their control over the companies before us. It is obvious that evasion of income-tax is one of the methods of gain.

Another of our terms of reference requires us to assess the extent of these gains. Obviously that cannot be done without examining the matter from the income-tax angle if the gain was by reason of an evasion or avoidance of the income-tax laws.

In the case of avoidance of income-tax there is nothing necessarily wrong or illegal in that. A subject is entitled to do that if he can within the framework of the laws. But when he does that he makes certain gains which would not have been possible if the laws had been otherwise. If Government wishes to know how certain gains were made in order to decide whether it is desirable and possible to plug loopholes in the law it is entitled to direct an inquiry along those lines; and that is how we have interpreted our terms of reference.

CHAPTER VI

THE D. J. GROUP

Under the terms of the Notification appointing this Commission we are directed to inquire into, among other things, the nature and extent of the control exercised over the scheduled companies and such others as we may add, by five named persons. They are R. Dalmia, J. Dalmia, Shanti Prasad Jain, Shriyans Prasad Jain and Shital Prasad Jain.

Now control can be exercised singly or by a group or association of persons. The material gathered by us indicated that three of the five named in the Notification acted as a group, at any rate for a time, from at least 1946. They were known as the Dalmia Jain Group; and that was the nomenclature accepted before us. Accordingly, we have throughout referred to R. Dalmia, J. Dalmia and Shanti Prasad Jain as the Dalmia Jain Group, shortened in most places to the "D. J. Group".

Shriyans Prasad Jain and Shital Prasad Jain were not members of this group though they are related to the other three and assisted them in several of the transactions with which we shall deal in later volumes.

The five named in the Notification are related as follows : R. Dalmia, was the seniormost member of the group and is the one who is shown to have had the predominant voice in all matters relating to the ten companies into which we are inquiring. J. Dalmia is his brother and Shanti Prasad Jain is his son-in-law.

Shriyans Prasad Jain is the brother of Shanti Prasad Jain; and Shital Prasad Jain is Shanti Prasad Jain's nephew.

It is admitted on all hands that the group functioned as a group till 31-5-1948. It was contended by Shanti Prasad Jain and J. Dalmia that the group was dissolved by reason of a decision reached by its members, on or about April 20th, 1948.

Shanti Prasad Jain and J. Dalmia pressed their case of dissolution of the group before us with great tenacity and at considerable length. We have examined their case about this in Volume II. The evidence that was led before us to prove dissolution on 31-5-1948 was untrue. Our conclusion is that the dissolution pleaded is not proved and that nothing happened on 31-5-1948, the day from which the dissolution is said to have taken full and final effect.

The group did not form a joint Hindu family because Shanti Prasad Jain, as a son-in-law, could not have been a member. But, by a family arrangement, or by some other agreement, the three members of the group constituted themselves into tenants-in-common of all group property.

This property was pooled even though parts of it stood, or were acquired, in individual names. The income from this common property was also pooled and then distributed among the three in defined shares after meeting certain specified liabilities.

The property consisted of cash, bank balances, shares in limited liability companies, and, in at least one case, an item of immovable property. Its total value ran into many crores of rupees.

The companies in which the group held shares and which they controlled numbered more than sixty. The control was exercised in various ways; but their control of companies outside the ten before us does not fall within the scope of our inquiry. As regards the ten, it is enough to say that, on their own admission, the group controlled the ten companies before us as a group at any rate down to 31-5-1948.

The nature and extent of the control even up to that date was nebulous. We have accepted the evidence that proves that even before 31-5-1948 the companies were divided between the three for convenience of management and that, though in theory the control resided in the group as a group, in practice it was normally exercised by what we might call the "member-in-charge." But this arrangement was not inflexible, and in some cases one or more of the others were associated with the management and control in varying degrees.

Evidence that would have been material was deliberately withheld and most of our efforts to get at the truth were successfully foiled. Accordingly we have not been able to reach any sure conclusion about dissolution. The plea of dissolution of the group as from 31-5-1948 has failed. It has neither been alleged nor proved by Shanti Prasad Jain and J. Dalmia that there was dissolution at a later date. In the circumstances it has not been possible for us to decide affirmatively whether there was dissolution of the group and if so its date. All that we can say is that after 1949, R. Dalmia alone managed and controlled certain companies and that Shanti Prasad Jain and J. Dalmia were not associated with the management or control of those companies.

This has made it difficult for us to apportion responsibility as from a particular date. In view of the large number of companies over which the group exercised control it would be unreasonable to hold that every member necessarily knew about what was going on in a company with which he was not actively associated. It may be that he benefited by the joint control and shared in the profits arising from an improper deal when the profits were thrown into the common pool for re-distribution, but it would not be right to say that he necessarily knew that a particular deal was crooked, and still less to say that he actively assisted in bringing it about. We have therefore decided to apportion responsibility in the following way.

We have accepted the evidence that proves that R. Dalmia was in effective control of the nine scheduled companies and Dalmia Dadri Cement, both before and after 31-5-1948. He is, therefore, responsible for all the malpractices that have come to light in these companies. The direct evidence, as well as the circumstantial evidence, shows that none of the matters with which we have dealt could have been brought about without his knowledge, connivance and directions. Therefore, his responsibility throughout is clear.

As regards the others. We have only implicated them when the evidence shows that they were directly concerned with any particular act or when they were directors at the time. In some cases the evidence is direct and

others it is circumstantial. But in the absence of that kind of evidence we have not held them responsible.

When there has been such evidence, we have deemed it right to infer, on the basis of the general evidence about the Group, that the association of a particular member with a particular transaction was because of his association and relationship with R. Dalmia and because he was still functioning as a member of the group at that time in relation to that particular transaction.

Shanti Prasad Jain and J. Dalmia were the only ones who really contested the issues that we raised, apart from the liquidators and auditor. They were not consistent in their attitude about responsibility. In their written statements they did not say that R. Dalmia was responsible for any of the acts that have questioned; nor did they admit their own responsibility. They threw the whole responsibility on the Board of Directors. But in the course of the arguments their counsel modified this and at first said that though the Board of Directors was responsible neither Shanti Prasad Jain nor J. Dalmia was responsible after 31-5-1948 even though still on the Board. In the end, even that was modified and the whole blame was thrown on R. Dalmia. They admitted that the directors were dummies who could not have acted on their own in the sort of major decisions with which we have had to deal. Counsel for J. Dalmia even said that his client, J. Dalmia was the biggest dummy of them all.



CHAPTER VII

ABUSE OF CONTROL

We are asked to look into the consequences or results of the management of the scheduled companies and D.D.C., generally, and in particular to report on the consequences of the investments, loans and transfers made by or to these companies.

Our investigations disclose that the funds of public limited companies, banks and insurance companies were improperly used for buying shares of other companies with large accumulated resources and substantial liquid resources in order to obtain control over them. The S.S.B. Mills, M.D.M. Co. and L.E.S. Co. are pertinent examples.

We are aware that this is frequently done in the commercial world and we are not questioning the practice as such. But in the companies that we are examining this was done for improper ends. The object was to use the accumulated funds of these companies for the benefit of the D. J. Group or R. Dalmia, or for the benefit of the companies some private, in which the group or R. Dalmia were interested. That again would not necessarily be improper. But in these cases it was always the public companies that suffered and the investing public along with them. The wrong lay in the fact that those who were in control wrested an improper advantage for themselves from the companies that they controlled and let the companies under their control suffer.

The ways in which these objects were achieved were as follows :

1. Loans and Advances

Companies in which the public had invested their moneys were made to give loans and advances without security and at low rates of interest to the companies in which the group or R. Dalmia were interested, to the advantage of the latter and to the detriment of the former. In some cases large advances were made to R. Dalmia personally.

In many of these cases large amounts were loaned to companies whose financial position was unsound. Also, in most of these cases, though the loans were given in cash they were not repaid in that form but were shown as "realised" by means of book adjustments.

Loans were also given to R. Dalmia personally. The debit balances outstanding against him increased in a rising crescendo year by year from 1948 to 1951. The balances against him at the end of those years were,

Rs
17,29,681
62,75,354
78,11,973
1,52,13,695

In pursuance of the decision taken about the middle of April 1948....the separation was worked out and finalised by the end of May 1948. As from 1st June 1948 each of the three individuals managed and looked after the affairs of only those companies which came to his share on separation and ceased to take part in the management of the business affairs of the companies which did not come to his share on such separation."

In cross-examination he said,

"We were not partners to any firm. We held our assets separately*By this partition we only mean that our effective control over the respective companies is sorted out.*"

In another place he said,

"There was no rigidity about any matter."

The written statements and particulars make it clear that the decision to separate was reached about the middle of April 1948 and that the date fixed as the effective date of separation was 31-5-48. But a rider was added in the following words [paragraph 4(c) of the application dated 1-3-60].

"It was also agreed among the parties that in the interests of each other's business and credit of the companies concerned, the implementation of such separation to

- (1) transfer of shares by each in the companies allotted to the others; and
- (2) cessation of directorships, change of managing and selling agencies etc., etc.,

shall be carried out in such manner as not to disturb the continuity of business of the said companies *according to the convenience of the parties concerned.*"

In the course of his evidence Shanti Prasad Jain's counsel asked him whether the adjustments in shares and directorships were carried out gradually or within a particular time. He replied,

"They were carried on as fast as they could but it depended upon the three of us and in some cases if one of them had not carried on as fast as otherwise he could have done *there was no alternative to force him to the understanding.*"

It is therefore clear that even if 31-5-48 was ostensibly fixed as the effective date for the separation it was not the effective date for all purposes because it was agreed,

- (1) that the transfer of shares should be left *to the convenience of the parties concerned*;
- (2) that the cessation of directorships should also be left *to the convenience of the parties concerned*; and
- (3) the change in the selling and managing agencies *should also be left to their convenience.*

If that was the case then the date 31-5-48 becomes meaningless. If Shanti Prasad Jain is telling the truth the group possessed nothing beyond the Lauriya farm, and the group had no legal rights against third parties ;

nor had its members any sort of legal rights against each other except in the farm. All that the group possessed in the shape of rights (if one can use such a term when there are none) was a legally unenforceable understanding relating to an intangible thing called "control"; and, according to Shanti Prasad Jain this intangible thing could only be divided by an interchange of shares, a cessation of directorships and a change of managing and selling agencies. But if the agreement was that these things were to take effect only when the parties found convenient (and not on 31-5-48), and if no one could be compelled to implement the understanding (which was that 31-5-48 was to be the effective date) then it is clear that that date had no meaning. They were, of course, free to adjust their financial obligations between themselves with *retrospective effect* from any date they liked, but that is not their case; and if it were, then their obligations to third parties could not be shelved in that way; nor could their responsibilities towards the companies with which they were associated.

This will be clearer when we examine Shanti Prasad Jain's case about the assets that are said to have been divided. He said in his application dated 1-3-60 that the *only* property that was jointly owned was agricultural farm at Lauriya, and he said,

"The applicant (Shanti Prasad Jain) was allotted this farm as also S. K. G. Sugar Mills Ltd. The applicant accordingly got the *shares, right, title and interest* of Shri R. K. Dalmia, Shri J. Dalmia in the said farm for Rs. 1,50,000 and Rs. 1,35,000 respectively on 31st May 1948."

But when Shanti Prasad Jain was asked about the rest of the group assets he began to fumble. When he was asked whether the group had assets for division he said that they had "shares in these companies." Then he said "All the companies plus Lauriya farm plus Punjab National Bank were divided."

When he was asked about the respective proportions in which the assets were divided he said :

"There was no such thing so far as the proportions position is concerned. We all of us were holding our own assets. It was a question of exchange of assets... We were holding these assets and they were exchanged so that the three persons continued to hold shares only in the companies which came under them."

When asked, "In terms of money... what was the total amount of assets held by the members of the D. J. Group", he replied, "it is difficult for me to give this". And when asked, "Was an attempt made to value the assets", he said, "Exchange is possible without this".

He went on to explain,

"Say I was holding Dalmia Cement Ltd. shares and this company had gone to the shares of J. Dalmia. We credit our investment account and debit J. Dalmia's account and ultimately there are final figures arrived at how much I have to pay to the companies of J. Dalmia and how much to the companies of R. Dalmia. We were carrying on this exchange. The result of the final figure will be either to debit or credit in the accounts of the respective persons."

A little later he said,

"The assets that I was referring to were the assets so far as the individual accounts are concerned. But they were assets which we have referred to in respect of this income tax liability but we were holding these assets personally in various companies and these assets were divided in a manner so that they became in the exclusive possession of the three respective persons."

He was asked whether the photostat list, Ex. S. 75, the original of which was signed by the three of them, implied that they agreed to the distribution of the companies as listed in that document. His reply was,

"I want to be very frank. *We did not attach any importance to that.* We never considered that we are partners to any firm and it does not mean that we divided that firm among ourselves. We held our assets *mixed with one another* and the effect of that was that the three of us were together exercising control over the said companies.

By this partition we only mean that our effective control over the respective companies is sorted out."

In our opinion the date 31-4-58 has no meaning. It is admitted that nothing was done on that date and it was also admitted before us in the arguments that no concrete act of implementation was carried out before 31-5-48. We are of opinion that this date is an afterthought introduced after March 1949 and that the case of partition as from 31-5-48 has not been proved. We will elaborate on this as we continue.

CHAPTER IV

DOCUMENTS : EX. 1216

The Privy Council once observed that in a case where there are conflicting stories both of which cannot be true, with a mass of conflicting evidence much of which must be false, the only safe way of reaching the truth is to seize on facts that are either admitted or proved beyond reasonable doubt and then to see which story best accords with those facts. That rule has also been applied in the Supreme Court of India. It is a well tried and common sense way of reaching the truth in the midst of a welter of lies and half truths. We intend to follow that path here. We will, therefore, first examine the documentary evidence.

The existence of the group up to 31-5-48 is admitted on all hands; but the nature of its association is a matter of contest. We will now concentrate on that aspect.

Shanti Prasad Jain's case and that of J. Dalmia is that the group was a loose association of persons who owned no common property except the Lauriya farm and that it was not bound by any legal tie. We will see how far the documentary evidence bears this out.

We will first examine Ex. 1216 dated 15-7-46. This a Hindi document that was executed by R. Dalmia, J. Dalmia and Shanti Prasad Jain at Mussorie on 15-7-46. Shanti Prasad Jain told us that it was drawn up by one Hanuman Prasad Tauji, an intimate friend of the family whom all trusted and revered.

The document was translated by a member of our staff but Mr. Misra said that there were certain inaccuracies in the translation. We asked him to correct the mistakes and we have accepted his version. We are now basing on the translation that he accepted.

The opening recital states that,

"We have re-partitioned our capital."

Mr. Misra preferred the word "principal" for "capital" but said that it did not make much difference. We will therefore call it "principal".

This recital imports two clear statements of fact :

(1) that the three of them held a certain "principal" at that date which they were re-partitioning. It is clear that only that which is held jointly or used jointly can be divided; otherwise there would be nothing to divide or "partition". Therefore this sentence imports a clear statement of fact that at the date of the document the three of them held the "principal" jointly.

It is immaterial for the moment whether this was held jointly as the result of some legally binding arrangement like a partnership or family arrangement, or whether this "principal" consisted of property thrown into a common stock voluntarily which it was now desired to repartition;

(2) The second statement is that there had been an earlier division between them and that what they were doing at that date was to *repartition* this "principal" on a different basis.

We will pause at this point to examine the different ways in which property can be held jointly and the various ways in which a division or partition can be effected.

One of the kinds of joint property is the kind with which we are familiar in India, namely that of a Mitakshara Joint Hindu family in which the four unities of possession, interest, title and time are all present at one and the same time. In this kind of property no individual has any distinct or separate share. There is usually a karta or manager who acts on behalf of all but the title is one and undivided. This is a joint tenancy.

Another kind of joint property is that in which the titles and shares are separate and distinct but in which all else is joint. The Dayagabhaga joint Hindu families of Bengal are illustrative of this. In this kind of jointness the owners hold as tenants-in-common.

But neither kind is limited to Hindu families. Both kinds of jointness can exist even among persons who are not related to one another either by blood or marriage. The first kind is unusual where there is no blood relationship but the second kind is common in many parts of the world as well as in India. It can arise in different ways, as, for example, contract or agreement, and it can manifest itself in different forms, as for example, a partnership.

Now it is clear that the three members of the Dalmia Jain group did not form a joint Hindu family. R. Dalmia and J. Dalmia were at one time members of a joint undivided Hindu family, but we were told by Shanti Prasad Jain that they separated some years ago—probably in 1939. It does not matter when so far as this is concerned because Shanti Prasad Jain who is a son-in-law of R. Dalmia; could not be a member of the Dalmia family in that sense. Therefore, if the three held property jointly it could only be as tenants-in-common.

We will now turn to the question of separation. A joint association can be dissolved or re-aligned in different ways: (1) The jointness can be severed totally for all purposes; or (2) after a complete separation there can be a re-union on a different basis; or (3) the separation can be partial; or (4) it can consist of only a re-allocation of interest.

In our opinion Ex. 1216 indicates a division of the last kind. We do not know how the joint property was held originally and it is not for us to speculate; nor does it matter. It is enough to know that jointness could have been brought about either by agreement or contract, or by a family arrangement that would have legally binding force if it had been implemented and acted upon. As the document solemnly recites that there was joint property which was then being divided, and as it was solemnly signed by the three of them, it is reasonable to conclude that the document was intended to have meaning and that it means what it says.

Then again, Ex. 1216 does not divide any property physically. It merely defines or re-allocates the share of each. There was therefore no

need to list or enumerate the property. It was enough to define the share that each was to have in the whole. Where, however, it was necessary to be more specific, as for example, when a ceiling had to be put upon certain expenditures, the document does that. Therefore the absence of lists of property was not carelessness or accident.

After reciting that the "principal" was being "re-partitioned" the document goes on to tell us what the "principal" consisted of, namely,

"which is in the shape of cash and shares and it situated anywhere."

It is clear therefore that at the date of this document there was a common pooling of cash as well as shares; and shares include the *dividends* on the shares and not merely the voting rights.

The document goes on to set out the exact interest that each was to have in these various common properties and how that interest was to be divided and distributed:—

30% was to go to charitable trusts;

20% to R. Dalmia;

25% to J. Dalmia;

25% to Shanti Prasad Jain.

The next clause relates to the dividends receivable from the shares. The clause says,

"As regards the *dividend* that shall be received on shares the same should be divided",

(1) among different charitable trusts,

(2) "as well as the three proprietors *in accordance with the above shares.*"

There can be no doubt that the arrangement was that the income from the shares was to be pooled and then re-distributed in certain defined shares.

Shanti Prasad Jain was questioned about his statement that there were no joint funds and that each was master of his own funds. He was asked,

"Could you spend the money in any way that you liked?"

He replied,

"That is true and that is not true. Legally it is absolutely correct that we were competent to do anything. *But the family understanding that we spent with a certain amount of understanding with those who might not have the legal right over me but still impliedly he advised in the said matter and therefore it is not correct.*"

This involved answer shows that in fact each did not do what he liked with what would be his money if Shanti Prasad Jain's statement about the separate ownership of the shares is true. If the shares in the different companies were the separate properties of the different members of the group then the income from them would go separately to each, and of course he would be able to do what he liked with this money. But it is

clear from this answer that, whatever the reason, the fact remains that each did not feel free to do what he liked with this money. On the other hand, if the arrangement was that the dividends were to be pooled and were to be treated as common property till divided in the proportions set out in the document then of course no member could do as he liked with the dividends until his share was separated off and handed to him. And a further inference from that is that the shares themselves were not held in individual rights but were the common property of the group irrespective of the person in whose name they stood.

Ex. 1216 then deals with the selling and managing agencies and says,

"Similarly they shall be entitled to shares *in the above proportions* in the managing agency and selling agency of the companies which there are at present *and which will come into being in the future.*"

The document then repeats,

"Ultimately with the consent of all and with the approval of R. Dalmia *re-partition in the above proportion* has been effected."

Then follow clauses about household and other expenses——the sort of thing that would be normal among members of a family operating from a common pool or chest. Thus R. Dalmia is entitled to take *out of his income* "according to his need". J. Dalmia is limited to Rs. 1,25,000 and Shanti Prasad Jain to Rs. 1 lac, *each out of his own income.*

Then follows a clause that is significant.

"The *balance* remaining shall be credited to the accounts of *the three in the proportions of their shares.*"

A clause of this kind would have no meaning unless the income from the shares and so forth was thrown into a common chest or pool and then distributed in defined shares after meeting specified charges.

The document also states that V. H. Dalmia son of J. Dalmia, is to be paid Rs. 5,000 a month for his household expenses "*by the companies.*" How could this be done unless the income from the companies was pooled? It would be impossible if the shares in these companies were separately owned and the incomes from each went to each owner of the shares in his separate right.

After this some certain clauses making provision for two of the ladies of the family. The mother of R. Dalmia and J. Dalmia was to receive Rs. 2,000 a month for her personal expenses, and the wife of R. Dalmia Rs. 2,000. These moneys were to come out of the income of R. Dalmia and J. Dalmia.

The penultimate clause refers to the three as three "maliks"; while the last clause says that none of the three shall carry on any separate business of any kind, which again imports the idea that at that time they were engaged in a business that was being carried on jointly or in common.

Shanti Prasad Jain tried to brush this document aside as a lot of nonsense executed to humour an old fashioned friend of the family who

was not "familiar with the precise legal form that we were at that time holding our assets."

Shanti Prasad Jain said,

"It was to express our sentiments and our wishes for separating in the manner that I have just said",

a manner that is the reverse of what the document, construed in accordance with any normal canon of construction, can be said to mean.

He also said,

"It was written by Tauji (Hanuman Prasadji) in his own language and in his own way not familiar with the precise legal form that we were at that time holding our assets. But it only expresses a family understanding as he desired and we agreed.

Explaining his own signature to the document he said,

"I signed this since there was signature of R. Dalmia and J. Dalmia. It was also written by H. P. Poddar".

Mr. Misra, arguing on behalf of Shanti Prasad Jain, called the document "a make believe document" executed "just for consolation" to "make a show". He drew our attention to the following clause which he said could hardly be taken seriously,

"However each one had at last the feeling of dissatisfaction that he had the larger share."

Mr. Misra said that the most convincing proof that the document was not intended to have any meaning was the fact that it was never acted upon.

We do not agree. The clause just cited may be a psychological index of hypocrisy. We are, however, clear that Ex. 1216 was intended to have meaning and that it was acted upon.

The most conclusive proof that it was not just a lot of nonsense lies in the fact that it has been carefully preserved. Not only that, but a photostat copy was made of it to guard against loss or destruction of the original; and so carefully was the original guarded that when Shanti Prasad Jain filed his documents he did not file the original but only the photostat copy and we had considerable difficulty in getting him to produce the original.

Shanti Prasad Jain's lists and statements made before the evidence began also showed that he attached importance to the document and relied on it in proof of his story of partition. In his letter dated 9-1-61 he said that he was annexing a list of some of the documents on which he wished to rely. The list enclosed with the letter was headed,

"List of documents on which Shri Shanti Prasad Jain wishes to rely."

The document in question was item 49 in the list and the description given was,

"A declaration signed by R. Dalmia, Shanti Prasad Jain and J. Dalmia in respect of partition of the properties."

On the 22-7-61 he filed another list and again included this document. It is item 39 and is described as,

"A declaration signed by R. Dalmia, J. Dalmia and Shanti Prasad Jain in respect of partition of the properties."

This list said that a photostat copy of the document was being filed and that the original could be produced for verification whenever required.

In a letter dated 4-1-61 J. Dalmia also relied on the original of this agreement.

It was not repudiated till much later when the damaging nature of its contents was realised on a closer study of it; and then frantic efforts were made to keep it out of evidence; and when that failed Shanti Prasad Jain gave as fanciful explanations to belittle its importance.

What seems to have happened is that by agreement or arrangement all properties relating to the family business, including shares, were acquired out of a common fund and were in fact joint property irrespective of the name in which they were acquired.

There is nothing improbable in this. In a joint Hindu family, property is often acquired in the name of one or other of its members, and sometimes, out of respect or for other reasons, in the name of a wife or mother. But despite that the property is joint family property and not the exclusive property of the person in whose name it stands. So also, even when there is no joint Hindu family, property is sometimes acquired benami in the name of another member of the family, or even in that of an outsider, the real owner being, not the benamidar but the person who paid for it: and if it was paid for out of family or group funds, then the family or the group is the owner.

We know that that was the position in the Lauriya Farm and we think that this was also the case with the shares, especially as many of them were held in the names of third parties, the real or beneficial owner being the group. In exactly the same way one or other member of the group could have held shares acquired in his name on behalf of them all. Mr. Misra said that in some cases one member of the group held benami for another member but he did not admit that they ever held on behalf of all. We think, in view of Ex. 1216, that the shares were common property irrespective of the person in whose name they were held.

Shanti Prasad Jain's case and that of J. Dalmia is that all properties, (except the Lauriya farm), and in particular the shares, were acquired with the separate moneys of each of them and belonged to them separately and not to the group. When we tried to test the truth of this by probing into the source from which the funds for the purchase of the shares came Shanti Prasad Jain refused to divulge the source.

He was asked,

"When you joined R. Dalmia and J. Dalmia did you contribute any capital to the business?"

He said,

"Slightly."

Then he was asked,

"Will you indicate in terms of money?"

He replied,

"I would not like to disclose that."

The following passages are also important,

"Q. Did J. Dalmia contribute?"

A. I do not know.

Q. Did R. Dalmia contribute anything?"

A. I do not know.

Q. Will you tell us the amount of money that you had invested in the companies that were divided.

A. I have no knowledge. I do not remember.

Q. Will that be reflected in your accounts?"

A. Party.

Q. Are your account books from 1933 to 1948 in existence?"

A. I do not know.

Q. Regarding the shares which were purchased by the individual members of the Dalmia Jain group, who supplied the funds for those shares?"

A. Borrowing from capital, the banks, our own capital and the profit that we made.

Q. When you say 'from your own capital' is it your personal money, or the money of the company, or of the group? Suppose Rs. 1,000 is paid for the purchase of shares, who paid the money to purchase them?"

A. It must have come out of the resources then available to me. There were no assets from the group.

Q. Did you maintain a record of the shares which were purchased from time to time?"

A. Records must be there.

Q. The question was did you maintain any record or not?"

A. Yes, I maintained the record.

He was then pressed to disclose the amount of money that he had invested between 1933 and 1948 in the companies that were said to have been divided. At first he said that he did not know and that he could not remember; but in the end he said,

"This is a public inquiry. I do not want to disclose my assets in such a public inquiry, and I also request you while I am very anxious to assist if I consider that the scope of the inquiry is with these 9 scheduled companies and I very humbly submit to you to excuse me to give the opinion."

The Chairman told him,

"May I remind you that you have raised the issue of partition. We are therefore entitled to obtain all information relevant to that issue. The question what property the group had and what interest you had in that property is relevant. We are not going to compel you to answer these questions though we have the right to do so. We are affording you an opportunity of explaining matters in order that we may test the truth of your story about partition. If you wish to avail yourself of that opportunity you can. If you do not, it will be held against you."

Mr. Shah intervened and said,

"According to the witness there is no partition of any joint assets excepting the Lauriya farm. All that happened was that the shares held by the individual members in the companies which went to their share were transferred by the others to those to whose share the companies were transferred. *Therefore that question does not arise.*"

The Chairman said,

"My observations still stand." Despite that warning no further information about this matter was forthcoming. It is clear that the attitude of Shanti Prasad Jain is that once he has made a statement it is improper to test its truth and ask questions the answers to which might reveal that what he said was not true.

There are many pointers to show that what Ex. 1216 sets out is the truth and that Shanti Prasad Jain's subsequent gloss and evasions are untrue.

We will first refer to Shanti Prasad Jain's evidence. He was asked the following question about the position in 1948.

"Do I understand that you have no knowledge about the number of companies that belonged to the D. J. Group at the time you decided to split up?"

His reply was,

"No previous knowledge."

Speaking again of 1948 he said,

"We did not attach any importance to that. We never considered that we are partners to a firm. We are not partners to any firm. And it does not mean that we divided that firm among ourselves. We held the assets separately and *because we were holding all these assets mixed with one another* the effect of that was that three of us were together exercising control over the said companies. By this partition we only mean that our *effective control* over the respective companies is separated out. We wanted by this partition that *our responsibility regarding management* of the said companies is separated out.....*The companies were most immaterial.....* We put down to R. Dalmia that we are quite happy if these companies are separated out in this manner."

He was then asked,

"Do I understand that you and J. Dalmia were quite indifferent as to the companies that might be allotted to you and J. Dalmia?"

He said,

"J. Dalmia more, myself a lesser degree."

The questioning continued.

"So that none of you was keen to have any particular company being distributed or allotted to you."

He said,

"Yes."

He was asked who laid down the principles of the partition and he said,

"If anybody laid them down it was R. Dalmia. Every initiative was with him and with no other body. The intention that was with us was that we wanted to separate. *Give us whatever you like.....* We were all owners of our own.....In that family atmosphere that we were working we always thought we may own ours. *We held Mr. R. Dalmia in that understanding as God.*"

This stand is inconsistent with the stand that Shanti Prasad Jain took in paragraph 4(c) of his application, dated 1-3-60.

In the end, referring to Ex. 1216, he said,

"This was written by Hanuman Prasad Tauji. He has been extremely kind to write.....*and we ultimately carried out the instructions of R. Dalmia.*"

Our interpretation of Ex. 1216 receives strong support from some of the witnesses who describe the "pre-partition" relationship as one of partnership. Of these witnesses the most important is K. N. Bajaj (W. 21) because he is such a close and intimate friend of the family. He said in examination-in-chief.

"At several other times *all the three independently* described, or *informed* me about the agreement for the dissolution of their partnership of the group business."

He repeated this in cross-examination and no attempt was made to clear this up by re-examination.

Another witness on this point is J. C. Jain (W 41). He joined the Bharat Bank, one of the D. J. Group concerns, in 1942 as a Public Relations Officer. He was General Manager of the Bharat Insurance Company from 1943 till March 1950. After that he was appointed General Manager of Bennett Coleman & Co. and was still in that position when he gave his evidence. He told us that he enjoyed the confidence of all three members of the group. He also spoke of a partnership between them and so was asked,

"You have spoken about the dissolution of partnership. Are you aware whether a deed of partnership was executed?"

He said,

"I have not seen the partnership deed. But I was told *by the three gentlemen* that there was a *partnership* between them."

He was not asked to clear this up in re-examination.

K. N. Bajaj (W 21) also told us that,

"Sometimes one, sometimes two and at several other times all the three independently discussed or informed me about the agreement for the dissolution of their *partnership* of the group business."

Bajaj also was not asked to clear this up in re-examination.

Sonthalia (W 37) and Bajoria (W 42) also spoke of a partnership between them. Bajoria admitted that he talked to Shanti Prasad Jain about the events of April 1948 "to refresh his memory", the morning on which he came to give evidence, so his description assumes added importance. Neither witness was re-examined on this point.

Now, if this was merely the opinion of the witnesses or their impression of the relationship between the three members of the group it would not have been of value; but J. C. Jain and Bajaj did not tell us what *they* thought but gave us the description that they were given of the relationship *by the three principals themselves*; and as that tallies so exactly with what Ex. 1216 says it is strong material to destroy the fanciful, airy relationship that Shanti Prasad Jain and J. Dalmia set up.

Mr. Misra very strongly objected to the use of this evidence. He said that the Commission had not indicated the nature of the Dalmia Jain Group and therefore it must either accept or reject his client's version of their association (a version that negatives any idea of partnership) : and if his version is not accepted then the Commission cannot hold his client vicariously responsible for any act as a member of the group unless there is proof that he was individually associated with any of the several acts complained of.

We do not agree. Even in a criminal case for conspiracy, once the conspiracy is established, that is to say association for a particular purpose, then every conspirator is responsible for every act done in pursuance of that purpose unless it can be shown that he had dissociated himself from the conspiracy before the commission of the act.

We have said in our statements of matters that there was a group in control of the companies that we are investigating and that the group consisted of R. Dalmia, J. Dalmia and Shanti Prasad Jain. We have set out how the control was exercised, among other ways, by the pooling of voting rights through the possession of shares held either in their own names, or held beneficially in the names of their relatives, friends and employees; and that by reason of such control certain undesirable acts, which we have specified, were committed. It is open to us to establish these facts by any of the evidence on record from whatever source it emanates.

Now it is not necessary for us to go to the extent of holding that there was a partnership within the meaning of the Partnership Act, 1932 though it is difficult to see what exception can be taken to the use of the term if

Ex. 1216 is accepted at its face value and if the three persons directly concerned chose to describe their relationship in those terms. The definition of partnership given in the Indian Partnership Act, 1932 is as follows :

“Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all.”

Whether this relationship is brought about by a contract within the meaning of the Contract Act or by reason of a family arrangement is not material.

However, as that is not the issue before us and as other factors would also have to be examined before a conclusion of partnership strictly so called could be reached we are not basing on that; and we do not mean to bind lay witnesses down to the technical meaning of an expression that they may have used in a loose sense. The important fact here is not what the *witnesses* thought the expression meant but that all three members of the group described their relationship as one of partnership on different occasions and to a number of different persons and that by and large the description fits in with Ex. 1216 in so far as that document imports,

- (1) a common ownership of property;
- (2) a pooling of interests and profits;
- (3) a demarcation of interests in the capital and the profits;
- (4) a distribution of profits in accordance with the shares demarcated and defined in the document; and
- (5) the carrying on of a business from which these profits are derived for the purpose of mutual gain.

These are the important points that emerge from the evidence and they destroy the case set up by Shanti Prasad Jain and J. Dalmia. Whether this amounts in law to a partnership is not material for our purpose.



CHAPTER V

DOCUMENTS : (continued) EX. S. 75

We will now turn our attention to Ex. 75. It is a list of the companies that are said to have been divided in the partition of April 1948. According to Shanti Prasad Jain and J. Dalmia it shows which company was allotted to whom. It is an incomplete list and does not tally with the list set out in Shanti Prasad Jain's application of 1-3-1960 nor does it tally with the list that we were given in the course of the arguments in Bombay. A number of explanations were offered about this. We will deal with them later. At the moment all that we will draw attention to is that when Shanti Prasad Jain was cornered in cross-examination he said that Ex. S. 75 was also just another scrap of paper of no particular importance. We will quote his own words. But before doing that we will draw attention to the curious fact that here again H. P. Poddar an old friend of the family who had drawn up Ex. 1216 and who did not understand their affairs was again called in to help settle the basic principles of the partition. At least, that is that Shriyans Prasad Jain told us. Shanti Prasad Jain said that no one settled the principles : "They evolved themselves."

Shriyans Prasad Jain said, speaking of Hanuman Prasad Poddar,

"These people regard him as one of the elders; though he may not be a blood relation he is more than a blood relation."

He said that Poddar assisted them, "in framing the basic principles of the dissolution."

But Shanti Prasad Jain contradicted this and said that, "Nobody laid down principles. They evolved themselves" though if anybody did, "It was R. Dalmia."

Speaking of Hanuman Prasad Poddar, Shanti Prasad Jain said,

"Hanuman Prasad Poddar was a person who was somebody who was respected even by R. Dalmia; he was a person in whom all of us have regard and faith; and Shriyans Prasad Jain was there because Hanuman Prasadji did not understand the implications of even our organisation. He understands business more what it used to be probably one hundred years back. He did not have clear notion about the management, about the modern industrial organisation and companies, etc."

Reverting to Ex. S. 75 Shriyans Prasad Jain told us that,

"At the moment these names were written out they would appear to be the *final* decision of these three persons."

As we have already pointed out the document does not contain a list of all the companies and has some important omissions. We accordingly questioned Shanti Prasad Jain about this. We give below the tangle of answers that he gave.

Q. "Will I be right in assuming that this document Ex. S. 75, in original represented the *final* decision of the members of the D. J. Group so far as the dissolution is concerned?"

A. "No Sir."

Q. "Apart from the changes that were made between you and J. Dalmia?"

A. "It did not."

At another place Shanti Prasad Jain said that the document embodied the "*first* final decision by R. Dalmia." Next he said that it embodied only a "*provisional* final decision by R. Dalmia". Then he said that he was a "little confused" and explained,

"I find something here Sir, which reminds me that it cannot be the first. It must be some *later* final decision. This was a *ripe* final decision."

Eventually he said,

"To the best of my recollection this appears to be the *final* decision between us."

Then he airily brushed it all aside by saying,

"We have never attached any great importance to it."

But when he was asked,

"Did you regard Ex. S. 75 as an important document evidencing partition?"

he answered,

"Yes."

And then, in the very next breath, he said,

"I want to be very frank. *We did not attach any importance.*"

He was asked,

"Do I understand that you have no knowledge about the number of companies that belonged to the D. J. Group at the time you decided to split up?"

He answered,

"No previous knowledge."

The questioning continued,

"As your knowledge was not clear was an effort made to get the names of all the companies?"

His answer was,

"No Sir, I know it looks odd to say but no real effort was made to find out the names."

In another place he explained.

"We held our assets separately....By the partition we only mean that our effective control over the respective companies is separated out....*The companies were most immaterial.*"

On this he was asked,

"Do I understand that you and J. Dalmia were quite indifferent as to the companies that might be allotted to you and J. Dalmia?"

He replied,

"J. Dalmia more, myself in lesser degree."

Q. "This is indifferent?"

A. "Yes."

Q. "Was R. Dalmia keen in regard to the companies?"

A. "No."

Q. "So that none of you was keen to have any particular company being distributed or allotted to you?"

A. "Yes."

Q. "Or him?"

A. "Yes."

One of the explanations given for this indifference was,

"This understanding what company should go to whom, at least so far as myself and J. Dalmia was concerned, was not a matter of very great consequence because we at that point of time thought that *we are competent to run any business that comes to us.*"

But this confidence is not consistent with what S. L. Jajoria (W 29) told us. He said,

"Shanti Prasad Jain told me that he had not worked independently on his own accord so far and there was shortage of capital. I advised that he must face the situation and that things will improve by the grace of God."

Shanti Prasad Jain said he regarded the list Ex. S. 75 as so unimportant that when a list of the "Principal" companies that came under the "influence" of each was carefully drawn up by counsel as an appendix to Shanti Prasad Jain's application of 1-3-1960 Ex. S. 75 was not used as a basis and was not even consulted.

Yet despite all this, this unimportant document was carefully preserved up to at least 1955. Shanti Prasad Jain told us that he saw it in 1955 as he was then very anxious.

"to find out some papers so that it may be possible, if necessary, to show about the respective interests between the three of us."

He, therefore, got a photostat copy of it in 1955, evidently because he considered it was important enough to show their respective business interests in that year.

We will now show that Ex. S. 75 is not a complete list and that it does not tally with the other lists that Shanti Prasad Jain gave us from time to time; also that there are important omissions in it. Shanti Prasad Jain could not deny the facts and floundered badly in trying to explain them away.

In his lists filed on 9-1-1961 and 22-7-1961 he described Ex. S. 75 as, "a photograph of a document containing lists of properties divided into 3 groups signed etc."

In one place in his deposition he said that,

"it contained the names of the *principal* companies. It is not a precise list."

A little later he said,

"I have used the words 'principal companies' It may not be entirely because. .etc."

"I ought to have used the names of the *principal* companies which come under the sole and exclusive control."

When pressed to explain what he meant, he said,

"What I classified as *principal* companies were those companies which had large assets and have substantial business."

When it was pointed out that Lesco Chemicals was in the list he said,

"Lesco Chemicals was a small company."

He also said,

"These companies that are represented on the paper are the *principal* companies of the D. J. Group and *smaller* companies are not mentioned."

He was then told to look at the list and point out which were the *principal* companies and which small; and then he added a third category,

"There will be some marginal also."

When he was told that there were omissions in the list he said that he might be holding some odd small shares which are negligible. So he was asked what was the decision about the odd negligible shares; and he said,

"So far as myself is concerned I did not have *any* *minor* companies and therefore I did not know anything about *mionr* companies."

Then he was asked why *small* companies were included in Ex. S. 75, and he said,

"These were certain companies with which we were more familiar and when we read something we remember that this company is associated with the company. Therefore, those companies had been mentioned. But when the new additions which were made in 1946, at least three together did not understand those implications fully, just like Govan Brothers Ltd. We only knew Govan Bros., but full implications were not known to all three of us. At least, they were not known to me."

He was asked whether Rohtas Quarries, which is in Ex. S. 75, was a small company and he made yet another distinction and said,

"Yes. But *important*."

But when he was asked,

"What is the distinction between a small company and an *important* company",

he said,

"Actually there is no distinction."

In the end he said,

"I must say that I was not in that position neither at that time nor now to know precisely what Dalmia Jain group companies consisted."

And when asked whether he inquired either from R. Dalmia or J. Dalmia, he said,

"No. We were too busy doing our own jobs."

His attention was drawn to the fact that Dalmia Jain and Company, which he had to admit was a "principal" company, was not in Ex. S. 75 and he said,

"Dalmia Jain & Co. has been omitted because on 31-4-1948 *though it was allotted to me* the shares of that company were held equally by J. Dalmia and Shanti Prasad Jain."

This is no explanation at all because when the lists were drawn up each held shares in many of the companies that were allotted to the shares of the others and the agreement was that the transfers were to be made gradually so as to suit the convenience of them all.

When he was asked whether an effort was made to get the names of all the companies he said,

"No sir I know it looks odd to say so, but *no real effort was made to get the names.*"

He also floundered when he tried to explain how the partition was brought about. He told us,

"The decision to break was immediate, but details as regards precision and the *principles* that took time. Shriyans Prasad Jain and Hanuman Prasadji took part in the principles being enunciated."

But at a later stage, when he was asked,

"Please tell us who laid down the principles."

He replied,

"They evolved themselves. Nobody laid down the principles."

Apart from this being meaningless, it is quite the opposite of the picture that K. N. Bajaj gave us : meeting after meeting : lawyers, officers of the companies, accountants and auditors coming and going the utmost difficulties being experienced, especially about the income-tax adjustment between themselves : technical difficulties, company law difficulties, audit difficulties; constant changing of decisions; directions to settle principles and to work out details in accordance with those principles; directions to work out adjustments so that there should be an equitable distribution; directions to draw up a dissolution; directions to draw up a document; all of which took "many years".

And of course that must have been so. The concealed assets alone ran into over 4 crores of rupees; also the bulk of the assets, in so far as they

consisted of shares in companies were held by a whole host of benamidars who held nominally. It is absurd to suggest that matters of this nature could have been decided in a few meetings without any discussion. We will now compare the two descriptions one after the other.

We will give the version of K. N. Bajaj (W 21) first. He said,

"Sometimes one, sometimes to and at several other times all the three independently discussed or informed me about the agreement for the dissolution of their partnership of the group business."

"The principle was decided that the dissolutions should take place and probably *some officers* were instructed to *draw up* the dissolution on that basis, to *work out the details* of the partition according to certain principles."

"I meant officers of the company, one of their own men of confidence."

"Sometimes when these people were discussing individually with *lawyers, auditors and officers of the companies* I happened to be present and they did not mind my presence."

In view of Shanti Prasad Jain's gloss on this it will be as well to point out that the answer just quoted was given in response to the following question,

"From what you have told us we take it that you were not present at any formal meeting wherein *partition* was *decided upon*, as the *others* were informal talks with you as a friend of this family?"

He asked us what we meant by a "formal meeting" and we said meetings where lawyers were asked to come. So it is clear that the answer that we have just quoted refers to meetings in connection with the partition. He also said,

"Because of the equitable distribution there may be certain industries which may have to be adjusted for that reason."

"Sometimes it used to be that talks on certain shares at different times were mentioned. Whether they were equitably distributed in that manner I have never verified."

* * * * *

"Even in *separation* they found certain technical difficulties from income tax and other points of view, and the company laws and they used to consult the auditors and lawyers and others. They had some difficulties. No doubt about it."

* * * * *

"Q. Was any document drawn up in regard to partition?"

A. Instructions were given.

Q. Instructions were given for drawing up documents?

A. Certain basis how the assets were to be distributed between the three partners, that was to be drawn up."

He also told us that Delhi lawyers were called in for these discussions.

We will now see what Shanti Prasad Jain says. Take the lawyers, auditors and officers first. Shanti Prasad Jain's attention was drawn to what K. N. Bajaj had said, and, after the passage in question was read out to him, he was asked,

"Now whether any lawyers, officers and auditors were called in at the time when this talk about separation was going on in April 1948?"

His answer was,

"There were no lawyers, Mr. J. Dalmia might have his auditors. Shakar Aiyar, for his own purposes, but to my knowledge they were not for the purpose of finding out details of partition. Similarly, there were no officers to find out details necessary for partition. They might be officers or you may call P.A.'s and senior persons, who might come otherwise to take other instructions of normal business, but they were not associated for working out any details of partition. We were carrying on at that time the heavy responsibility that we had in respect of various companies and we must have given instructions to the respective officers in the normal course of the business in respect of these companies."

Q. "So this is quite clear that the assistance of lawyers, auditors and officers of the company was not sought for working out the details of partition?"

A. "No Sir"

Q. "Were the balance sheets consulted before drawing up this list?"

A. "No Sir"

Q. "Did you seek the assistance of any lawyer or any officers of the companies?"

A. "No Sir"

Q. "Were the books of these companies requisitioned during this time?"

A. "No Sir"

K. N. Bajaj was called by J. Dalmia. There was no cross-examination on behalf of Shanti Prasad Jain, and J. Dalmia's counsel made no attempt to clear up any mistake K. N. Bajaj might have made by questioning him on re-examination.

We will take the next point about the equitable distribution of assets and need to make adjustments for the inequalities that would ensue from a distribution of shares. Shanti Prasad Jain was asked,

"Was an attempt made to value the assets?"

His answer was,

"Exchange is possible without doing this thing.... Say I was holding Dalmia Cement Ltd. shares and this company had gone to the share of J. Dalmia, we credit our investment account and debit J. Dalmia's account and ultimately there are final figures arrived at how much I have to pay to the companies of R. Dalmia. We

were carrying on this exchange. The result of the final figure will be either in debit or credit in the accounts of the respective persons."

and then he went on to explain how; which means that according to him the assets were not valued as it was not necessary because each owned his own shares. The question was repeated,

"I am asking you, when this decision of assets was made the assets must have been valued?"

He again gave a long rigmarole of an answer which added up to the same thing, namely, that there was no valuation because that was not necessary.

Not only was there no valuation, but he says that he neither knew, nor cared to know, what the companies were or how they were to be distributed. His case was that each owned what he had so there was no question about valuation; all they were doing was to re-arrange *control* and as this involved the transfer of shares each paid the others the proper price for the shares he received and so the whole thing adjusted itself.

"We never attached any great importance to it."

"This understanding what company should go to whom, at least so far as myself and J. Dalmia was concerned, was not a matter of very great consequence. . . . I do not suppose that we attached any importance."

"I know it looks very odd to say so, but no real effort was made to find out the names of all the companies."

"Only in respect of the principal companies for the purpose of exchange of assets certain *arbitrary figures* were taken."

"We were all of us holding our own assets. It was a question of exchange of assets."

"We did not attach any importance. We never considered that we are partners to the firm. We are not partners to any firm."

"We held our assets separately. . . . By this partition we only mean that our effective control over the respective companies is separated out."

"The companies were most immaterial."

Then he said that he was quite indifferent as to which companies were to be allotted to him.

Now let us see what he says about the instructions that were issued to Shital Prasad Jain.

"We three were holding our assets. In what manner these assets should be exchanged: We had to examine respective goods, examine the respective companies that if this company is holding investments of D.C.P.M., to find out at what price it is holding and what is its profit. That this should be sold to Shahpur or Dalmia Investment or Gwalior Bank; to find out the resources position of the buyer and to find out the assets held by the seller and arrange that sale in an appropriate manner. This was the most extraordinary dealing and it was still done so smoothly."

We will turn next to Shanti Prasad Jain's statement about instructions to draw up documents for the partition.

Q. "Is there any writing in respect of the decision that it is to be effective from 31-5-1948?"

A. "No Sir. There is no writing of any kind, except, as I said that whatever decision was arrived at at that time was recorded in 1952."

* * * * *

"Everything (after 31-5-1948) was being carried on normally. The only thing that has happened is that before that date we had a certain understanding. After that date two of us especially carried on our operations in a way that we liked the best. That was the only difference that has taken place of this separation. *Otherwise in law nothing has happened.* The funds were there, there were the Directors and everything was going on."

Q. "Why was not this reduced into writing in a memo?"

A. "It was an understanding. There was no necessity."

* * * * *

"I never bothered with details."

* * * * *

Q. "Did you have a record of the shares which were not held in your name but were held in the name of others but which were owned beneficially by you?"

A. "No. We held physical possession of the shares and the physical possession was exchanged whether they were held in our names or benami names."

Q. "The shares of which you had physical possession. are they mentioned in your account books?"

A. "Not necessarily. . . . Because the shares that were held in the books were also physically possessed by us and some of them were also held benami and there were other shares also which were not stated in the account books, but held in our names or benami names."

Q. "Who had physical possession of these shares?"

A. "There were accountants and persons entrusted with the securities."

Q. "Did you have some official who was maintaining a record of all the shares of which you had physical possession?"

A. "Yes."

Q. "Did you have records of all these?"

A. "Yes. At that time."

Q. "Is that record available now?"

A. "No."

We will next examine Shanti Prasad Jain's story about the time that was required for straightening out the details of the partition.

He was asked,

"Between the time you decided to separate and this writing you had prolonged discussions and deliberations?"

He said,

"Yes and no both. As I stated the decision to break was very immediate. But details as regards preciseness and the principles, that took time."

He also said,

"Between three of us, *We never talked whenever we have the slightest difference. We used to sit with R. Dalmia for three hours even then we never talked about any difficulty.*"

* * * * *

Q. "No difficulties at all in the distribution of these companies raised either by yourself, J. Dalmia or R. Dalmia?"

A. "No Sir."

Q. "It was all smooth sailing?"

A. "Smooth sailing is not the word Sir. Whatever is decided we were quite happy. That was the biggest satisfaction we get that he agreed to separate us. We never bothered afterwards what happened."

* * * * *

Q. "What is the significance of the date 31st May, 1948?"

A. "Because we came to a decision by about the 20th of April, *finalised the whole thing by 20th April* and we had about a month. Otherwise there was no significance. The only significance is that we should do the job as early as possible *and were in a hurry.*"

Q. "Was this decision reached within a day or two when this document was signed, either one or two days before or one or two days after?"

A. "May be two or three days."

The income tax liabilities evidently formed a very important part of the discussion about partition, K. N. Bajaj was asked,

"In 1948 did they talk to you about tax difficulties they might get into or they might anticipate because of the Income Tax Investigation Commission?"

He said,

"Even in the separation they found certain technical difficulties from income-tax point of view and other points of view and the Company Law and they used to consult the auditors and lawyers and others. They had some difficulties. No doubt about it."

He was then shown Ex. J. 24 and was asked,

"Did any one of them talk to you about the result of the Income Tax Investigation Commission Report?"

He replied,

"It went on for *many years* if I remember and *at different stages different conclusions were arrived at*. So these talks used to take place.

This sounds reasonable and finds support in Ex. J. 7 where it is said on 21-9-1952.

"In supersession of all previous arrangements or understandings written or verbal, if any, between the parties hereto,

IT IS NOW HEREBY AGREED AND DECLARED etc.,"

This passage in Ex. J. 7 also supports K. N. Bajaj where he says that the talks went on for many years and that they kept on reaching different conclusions. It is true he is referring to the income tax talks; but it is equally true that he said that the settlement of the income tax difficulties formed an important part of the discussions about partition. It is evident then that there could not be any "complete" and "final" partition until the income liabilities were squared up between themselves; and if that took many years, it is evident that there was not complete and final settlement and solution in April 1948: there were only exploratory talks and possibly some provisional readjustments of management. In that event Ex. S. 75 was not drawn up to evidence a partition but to form a basis for the re-allocation of management pending a final solution.

We hear of the date June 1948 for the first time in Ex. J. 7 dated 21-9-1952. In our opinion the date 31-5-1948 was an afterthought. That also explains why the original of Ex. S. 75 is not forthcoming. We are entitled to draw the inference that it is part of another book or piece of paper from the internal evidence that the photostat copy affords.

We referred to the internal evidence that the photostat copy Ex. S. 75 affords to show that it was part of another document. A close examination of the photostat shows that the sheet on which the lists were written was either part of another sheet of paper or that it once formed part of a book. The left hand edge of the photostat shows certain indentations of the kind that one finds in a book near the stitching. Therefore, the lists were either written in a book, or the page was torn out of a book and the lists were written on the loose sheet that would be thus obtained. Whichever it is we gravely suspect that what we have been shown is not the whole document. What K. N. Bajaj told us strengthens our suspicions.

He was asked,

"Was any document drawn up in regard to partition?"

He said,

"Instructions were given but actually whether it was drawn up or not, I cannot say."

Q. "Were instructions given for drawing up document?"

A. "Certain basis how the assets were to be distributed between the three partners: that was to be drawn up. But whether it was ultimately to be a document or not I cannot say."

We think that something of the sort must have been done; and we suspect that Ex. S. 75 is only part of a fuller document that sets out the basis of the distribution and embodies the real agreement that was reached at that stage.

The part that has been photographed is probably only the schedule. That would explain the absence of a date because the date would then be in the body of the document and the schedule would only be signed. Also, if it was only to form the basis of a more formal document to be drawn up later it is understandable that a rough draft should have been entered in a book. In any case, what K. N. Bajaj tells us about the negotiations in April 1948 is so completely at variance with what Shanti Prasad Jain said that we find ourselves unable to believe Shanti Prasad Jain. The evidence of K. N. Bajaj sounds much more natural and likely. In our opinion Ex. S. 75 does not represent the final arrangement even as between R. Dalmia on the one side and J. Dalmia and Shanti Prasad Jain on the other. It is not the kind of document that one would expect as evidence of a dissolution of even as loose as an association as Shanti Prasad Jain speaks of. On the other hand it is understandable as a provisional re-arrangement of the internal management of the business for their common convenience and greater benefit pending a final arrangement.

Another reason for rejecting the theory that Ex. S. 75 indicated the companies allotted at a partition is that, apart from glaring omissions that would have been impossible in a *complete* partition of the kind pleaded, there were important re-allocations in the lots set out in Ex. S. 75 between Shanti Prasad Jain and J. Dalmia only two days after the list is said to have been signed. If Ex. S. 75 was only a rough list drawn up to indicate the companies then under the management of each so as to form the basis of talks pertaining to a reallocation of management in this group of companies the omissions and subsequent re-allocation between Shanti Prasad Jain and J. Dalmia would be understandable. But these omissions in Ex. S. 75 and the changes effected only two days after it was signed are not consistent with the story of a final and complete partition on the date the lists were drawn up.

The re-allocations to which we refer are these. In Ex. S. 75 the following companies appear under the name of Shanti Prasad Jain :

Govan Bros. Ltd.

Govan Bros. Rampur.

These two companies managed the Rampur group of companies namely, the sugar mills at Rampur, the Maize company and the Distillery.

In Ex. S. 75, the following appear under J. Dalmia's name :

S. K. G. Sugar Mills-cum-Lauriya Farm.

Universal Bank.

In the later lists that were given to us we find the positions reversed. We were told that the change was made only two days after Ex. S. 75 was signed.

Shanti Prasad Jain's explanation of this is that neither J. Dalmia nor he attached any importance to Ex. S. 75 because they had no quarrel between themselves and so it did not matter what companies were assigned to them as they knew they could always effect an amicable re-arrangement between themselves at a later date; and they actually did so a couple of days after they signed Ex. S. 75. The reason for the exchange was that J. Dalmia lived in Delhi and Shanti Prasad Jain in Dalmianagar, so it was more convenient for each to have companies situated in the area in which he lived.

They did not think of amending the list after they did this because no one attached any importance to it.

This does not sound likely.

But whatever the reason for the execution of S. 75 the fact remains that no importance was attached to the distribution of the companies at the "partition" of April 1948. No one really cared which company went to whom. They were satisfied with what R. Dalmia did.

And more than that. They did not even bother to value the assets. Though Shanti Prasad Jain told us that the principles of the partition evolved themselves Shriyans Prasad Jain (W. 47) said that he helped to form the basic principles of the dissolution and that they were decided upon before Ex. S. 75 was drawn up. But he said that the interests of the three in these various companies were not valued because valuation did not form one of the principles of this queer partition. But K. N. Bajaj said it did.

Much of that kind of attitude is understandable if what was done in April 1948 was an internal re-arrangement of management for the sake of mutual convenience among themselves pending a final solution. If that was all that happened and the arrangement set out in Ex. 1216 was still in force, then this indifference about assets and the allotment of companies and the absence of any kind of valuation of assets is understandable. Everything would still be joint and the income from the companies would still be pooled and distributed in accordance with the shares set out in Ex. 1216. So it would not matter very much how the internal management of the group business was re-arranged among themselves. The profits would flow in as before, probably in greater volume because of a better streamlining of the management leading to more efficiency. But the monetary interests of each would remain as before and each would continue to benefit from the efforts of the others because each would still be working for all and benefiting themselves accordingly; "all for each, and each for all".

On the other hand, the kind of story put forward for a dissolution of a business association embracing concerns worth many crores of rupees is wholly improbable. It is utterly divorced from the facts of life and offend one's knowledge of the business world and of hard-headed industrialists. The story breaks down at every point where it can be tested.

Even Shanti Prasad Jain admitted in one of his many long winded explanations.

"By this partition we only mean that our *effective* control over the respective companies is separated now. We wanted by this partition that our responsibility regarding the management of the said companies is separated out so that we may be able to have a smaller sphere and carry on our job in our smaller sphere. . . . The companies were most immaterial; whatever we get or remained confined to those companies."



CHAPTER VI

THE LAURIYA FARM

We will now look into Shanti Prasad Jain's case about the Lauriya farm. That at least was a tangible asset and it was held by the group jointly. It was bought in Shanti Prasad Jain's name but he said it was paid for by the three of them and he admitted in his application of 1-3-60 that the other two had a "share, right, title and interest" in it. Shanti Prasad Jain was therefore a *benamidar* so far as the shares and interest of the other two were concerned. He also told us that as the title deed (Ex. S. 187) stood in his name there was no need to execute formal deeds transferring the interests of the other two to him. So, according to him, the transfers of the "share, right, title and interest" were effected by the simple expedient of making entries in their respective books of account. We will quote his own words.

"In the books of the three persons the ownership of Pitaji (R. Dalmia) and Chachaji (J. Dalmia) in the farm was transferred to me and it is represented by the book entries in respect of the books of the three persons. . . . I paid the book value as represented in the books of Pitaji and Chachaji."

Now if we accept his view of how, to use the language of his application, the "share, right, title and interest" of R. Dalmia and J. Dalmia could be transferred to him by simple entries in the books of account, we have at any rate, a matter here that, according to his thinking, was simple and straight-forward. No complication was involved, not even the drawing up of a legal document or the signing of lists of shares. The book values of the different shares were already there entered in the various books of account; and as the agreement was to pay these book values by means of entries in the books there was nothing to prevent at least that being done on due date and the transfer being made effective on the date fixed, namely, 31-5-48. It will be remembered that the agreement to effect the transfer on that date is said to have been reached in the middle of April. So there were full five weeks for making the necessary entries in the books. But what do we find?

The entries were not made on that day and were entered at a later date in some blank spaces in the personal account books of *both* Shanti Prasad Jain and J. Dalmia under date 31-5-48. In both sets of books these entries are obvious interpolations and there is much to show that they are not genuine and that the books were manipulated, at any rate in respect of the Lauriya farm transaction.

But before we go into that we will comment generally on Shanti Prasad Jain's conduct about these books.

As we have seen, the most important evidence about a partition on 31-5-48 is the sale of the Lauriya farm. It is the only tangible asset that the group is said to have owned; and it is the only tangible transaction that is said to have been effected as on that date. All the rest is intangible and notional : a mere decision taken in April 1948 to have nothing to do with each others business as from 31-5-48, a decision that was not implemented

on that day but which was carried through in a leisurely way after 31-5-48, at different stages and on different dates. It is admitted that nothing actually happened on 31-5-48; and it is further admitted that the only concrete evidence on paper to indicate an implementation of the decision to effect the partition as from 31-5-48 is the Lauriya farm transaction. The truth of the story about the Lauriya farm is therefore of vital importance in testing the truth of the story of a partition on 31-5-48.

Next it is admitted that their mode of giving effect to the transfer of this farm was to make entries in their respective account books. Therefore, quite apart from anything else, these books are the most important and vital pieces of evidence on the question of a partition on 31-5-48.

In view of the special features of this case where there is no document or deed to evidence or effect the dissolution, the trustworthiness of the account books is more than usual importance. It is vital therefore that account books in this sort of case should have been regularly kept and that they should be above suspicion. But what do we find?

These books were not regularly kept; they were held back and were not brought to light till the very last stages; they have been manipulated; and witnesses called to prove the entries in them given demonstrably false evidence about them.

The Commission was appointed on 11-12-56 but before anything could be done a writ petition was filed in the Bombay High Court. No stay was ordered but the Commission voluntarily stayed its proceedings except for certain procedural matters.

At a hearing on 29-3-57 at which all the members of the group were represented, the Commission said,

"There is power in the Commission to obtain the information either from the parties or from outsiders; but the Commission would like to know whether the parties concerned would volunteer to answer queries and supply information to the Officers of the Commission before the statement is finalised, and indeed for the purpose of being able to finalise the statement."

The answer of counsel was that they not say anything without consulting their clients.

The next public hearing of the Commission was on 22-4-57. *There was no reply to the above query.* Counsel for R. Dalmia said that he had not had a chance of consulting his client. Mr. Shah, who appeared for Shanti Prasad Jain and J. Dalmia, merely asked for an adjournment in view of the writ proceedings that were then pending.

The Commission said,

"Parties were informed that unless they agreed to disclose relevant documents and to give necessary information....the Commission will have to obtain necessary information and/or documents by resorting to its powers under the Commissions of Inquiry Act."

The Bombay High Court gave its decision on 29-4-57 and dismissed the petition except on certain points that do not concern us here. There

was an appeal to the Supreme Court and the appeal was also dismissed except on a point that also does not concern us now.

One of the points specifically taken in the Bombay High Court by all the parties was that the Act and Notification violate the provisions of Art. 20(3) of the Constitution. This point was also taken before the Supreme Court but was not pressed at that stage as it was considered premature. The Supreme Court said,

"It is frankly stated by the learned counsel that this point is rather premature at this stage and that he desires to reserve his clients right to raise it in the future."

It will be seen that the point was not abandoned and that it was expressly reserved for future use.

The Commission held a public hearing on 30-9-58 for settling its procedure. Mr. C. C. Shah was present on behalf of Shanti Prasad Jain. Objection was taken to the use of section 5(2) by the Commission but the objection was rejected, the Commission holding that it had power to resort to section 5(2) if and when necessary. It was also pointed out that section 5(2) confers a protection and the Commission said that each question of privilege would be decided when it arises :

"We have been given certain powers and section 5(2) confers a certain protection because disclosure can only be ordered 'subject to any privilege'. Each question of disclosure will be decided if and when the matter arises."

The objection taken to the right of the Commission to resort to section 5(2) was therefore specifically rejected.

As there was no response the Commission was obliged to resort to its powers under the Act. Accordingly it issued a notice to Shanti Prasad Jain under section 5(2) on 27-12-58 asking for information about the purchase by Shanti Prasad Jain from D.C.P.M. of shares in 4 companies, (1) Albion Jute Mills, (2) Lothian Jute Mills, (3) Dehri Light Railway Co. Ltd., and (4) Bharat Collieries Ltd., and about their subsequent sales. The Commission also called upon him, under section 4(b), to produce the account books and vouchers relating to these transactions.

The information asked for was given on 16-2-59 so far as the *purchases* were concerned but no information was given about the *sales*; also *there was no reply* to the notices under section 4(b) to produce the account books and vouchers.

In his reply Shanti Prasad Jain said that the payment to D.C.P.M. was by book adjustments and that the payment was made through Ashoka Marketing. He was, therefore, asked on 15-4-59 how and when the payment was made through Ashoka Marketing; *and he was again summoned under section 4(b) to produce the account books and vouchers.*

He did not comply, so two reminders were sent. He twice asked for time and in each case the request was granted. The last reminder was sent on 3-11-59 nearly a year after the original notice. Despite that there was no compliance.

Similar notices were sent to Shanti Prasad Jain on 10-6-59 under Section 5(2) asking for details about the purchase by him of certain preference

shares of Allenberry & Co. He asked for time. Time was granted. A reminder was issued and eventually a reply was sent on his behalf by Mr. S. K. Kapur on 10-8-59 challenging our right to resort to section 5(2) and claiming the protection of Article 20(3).

Our right to call for for the account books and vouchers was not questioned in that reply.

We issued similar notices to two of Shanti Prasad Jain's companies on the same date, 10-6-59, regarding the sale by them to Shanti Prasad Jain of certain Allenberry shares. The two companies were Rishab Investments and Bharat Collieries. *Both are public limited companies.*

Their replies were identical with that of Shanti Prasad Jain except as regards Article 20(3). First a request was made for time on the same date as Shanti Prasad Jain's request and then came the reply from Mr. Kapur challenging section 5(2) in exactly the same words.

Shanti Prasad Jain admitted in his evidence that these companies were under his control, and in answer to a series of questions asking who authorised these public companies to instruct Mr. S. K. Kapur to raise this objection about section 5(2) he said,

"The appropriate authority in the case of the two companies was myself. I gave appropriate information to Mr. Kapur to present this application under section 5(2)."

The only reason that he could give for his conduct, apart from saying that he had been so advised, was,

"We gave information that we thought it was necessary for the Commission. We withheld the information which we considered not necessary."

Shanti Prasad Jain was not able to tell us whether he was a director in either of these two companies nor how he exercised control over them. But even if he was a director he had no right to instruct them to withhold information asked for in a public inquiry and thus attempt to balk a statutory investigation. No question of privilege could arise in their cases. This was a clear abuse of his power of control.

Similar notices were issued to Dharanghdara Trading Co., another of Shanti Prasad Jain's companies, under section 5(2); also account books and vouchers were called for under section 4(b). Here again there was no compliance.

Messrs. Ved Vyas and Kapur asked to be heard in support of the three answers given on behalf of Shanti Prasad Jain, Bharat Collieries and Rishab Investment on 10-8-59. Accordingly we heard them at a public hearing on 27-10-59 and Mr. Ved Vyas argued the applications with Mr. Kapur sitting by his side. Our order about that, dated 29-10-59, is as follows,

"Shanti Prasad Jain's application also states that he claims the protection of Article 20(3) of the Constitution. In clarification of this Mr. Ved Vyas said that the ground on which the protection was sought was that Shanti Prasad Jain apprehended that disclosure by him of whether or not he purchased certain Preference and Ordinary shares in Allenberry & Co. and the circumstances in which they

were bought and later sold, and the persons or companies from whom they were bought and sold (assuming that they were) and the sources from which he obtained the money for their purchase might incriminate him in respect of certain offences of which he has been accused by the Registrar of Companies, Delhi, among them, criminal breach of trust, cheating, falsification of accounts, forgery and certain allied offences including offences under section 222 of the Indian Companies Act, 1913; as also offences under the Control of Capital Issues Order in respect of the sanction given by the Examiner of Capital Issues for the issue of shares of Dalmia Jain Airways."

Mr. Ved Vyas also said that the information asked for under section 5(2)

"might provide a link in a chain of evidence that might lead to his incrimination on the above and other charges. Accordingly he claimed the right under Article 20(3) of the Constitution not to furnish the information."

As we were not getting anywhere by pursuing this line of inquiry we held that the questions asked by us under section 5(2) were relevant and useful for the purposes of the inquiry but that

"on further consideration we have decided not to exercise our powers under section 5(2) for the time being *in respect of these three applications* in order to avoid prolongation of the inquiry by repeated piecemeal attacks on the constitutionality of the various provisions of the Act. Accordingly, for the present, we withdraw the summonses issued under section 5(2) to the three applicants named in this order."

In view of that the questions that Shanti Prasad Jain has raised under Article 20(3) of the Constitution does not arise.

As the summonses are withdrawn no further order is necessary.

It will be noticed that *there was no attack on our powers to order the production of documents under section 4(b) and no objection of any kind was raised about that; nor in fact could any have been raised.* The account books were admittedly relevant because they were produced 3½ years later by J. Dalmia and Shanti Prasad Jain in support of their case about partition; and the Supreme Court has held that Article 20(3) does not apply to account books because they in themselves are not directly incriminatory.

Apart from this Shanti Prasad Jain denied in the witness box that he had ever claimed the protection of Article 20(3) and said that Messrs. Ved Vyas and Kapur had not received instructions from him to raise this plea on his behalf and that Mr. Ved Vyas had no authority to appear for him.

As a matter of fact Shanti Prasad Jain did raise the plea specifically in his writ petition in the Bombay High Court and we do not believe him when he says that he did not read Mr. Kapur's reply, dated 10-8-59 to our notice, dated 10-6-59. He was asked,

"Did you read those applications that he sent?"

His reply was,

"No. *Probably now only* when we were discussing I saw them".

In his affidavit, dated 11-4-57 before the Bombay High Court, Shanti Prasad Jain said,

"The counsel for the parties appearing" (which included counsel for Shanti Prasad Jain) "pointed out the difficulties, *particularly in view of Article 20(3) of the Constitution*, and ultimately the Commission left it to the option of the parties to file such replies."

And later,

"At the first meeting held before the Commission it was pointed out to the Commission *on behalf of the parties*" (which included Shanti Prasad Jain) "appearing that the provisions of the Notification read with the Commissions of Inquiry Act violate Article 20(3) of the Constitution. The Commission then stated that the objection may be taken at the appropriate time."

In the petition itself Shanti Prasad Jain said,

"The provisions of the said Act read with the Notification violate *the petitioner's rights* under Article 20(3) of the Constitution."

Not only did he take and press the point in the Bombay High Court but he pursued it right up to the Supreme Court and there, far from abandoning it, *he reserved his right to raise the point at a later stage*. When therefore we find counsel taking the point at a later stage we are not able to believe that the plea was taken without authority. This is particularly so in view of Shanti Prasad Jain's subsequent conduct. There was no repudiation till he entered the witness box 2½ years later though there were several occasions when it could have been raised and would have been raised if there was any truth in what Shanti Prasad Jain now says.

However, Shanti Prasad Jain told us in his evidence that this matter had been given great prominence in the Press and that he was greatly agitated when he read about it on the next day. He said that he had several meetings with Messrs. Ved Vyas and Kapur and

"We thought over the matter very seriously with these counsel and other counsel how we should redress the wrong that has been done and your order which withdrew these notices came to the aid of these counsel. You said in the order, "We have heard Mr. Ved Vyas . . . no further order is necessary".

Now this raises two points. The first is that the matter that agitated Shanti Prasad Jain was the publicity given in the Press to Mr. Ved Vyas' statement and the consequent injury to Shanti Prasad's reputation. It is difficult to see how this was redressed by an order that said in effect that for the present we would accept Shanti Prasad Jain's objection and would act on the assumption, (a) that he had the right to claim the protection of Article 20(3), and (b) that unless he was given that protection his answers to the questions that we had asked him might incriminate him. To any reasonable mind it would seem that his silence in those circumstances would only make matters worse so far as his reputation was concerned.

The second point is that he specifically claimed the protection of Article 20(3) in the Bombay High Court and that he continued to press the point in the Supreme Court and there expressly reserved his right to raise the point later. It is our view that he did want to try and take shelter under Article 20(3); and whether or not he instructed Mr. Ved Vyas to

appear for him he certainly instructed Mr. Kapur. At the same time he was anxious to leave an impression on the minds of the Commission that he was much too straightforward a man to seek shelter under such a technicality however much he had the right to do so. We will develop this as we go along.

Any way, though Shanti Prasad Jain knew *on the very next day* what Mr. Ved Vyas had said he made no attempt, either publicly or privately to repudiate it for 4½ months.

There was a public hearing on 11-12-59 at which both Mr. C. C. Shah and Mr. Ved Vyas were present. There was another on 1-2-60 at which Mr. C. C. Shah was present and there was one on 14-3-60 when Messrs. Bhagwati and Shah appeared for Shanti Prasad Jain. Mr. Bhagwati argued an application asking that the issue of partition be decided first. He was asked whether his clients, J. Dalmia and Shanti Prasad Jain, would enter the witness box and whether they intended to claim the protection of Article 20(3). The Minutes of that hearing record his answer as follows,

"He gives us an undertaking that his clients (J. Dalmia and Shanti Prasad Jain) will enter the box in support of their statements in those applications; also that they will not claim the protection of Article 20(3) of the Constitution when cross-examined *on the matter of partition* and matters relevant thereto; also that his clients are willing to be cross-examined on matters that occurred prior to the date of partition *provided* they led up to or have a bearing *on the question of partition*."

Why should Mr. Bhagwati have made this carefully guarded statement *confining the undertaking to the issue of partition* if there was no intention to claim the protection of Article 20(3) at all. It must be remembered that this statement was made after the statement of Mr. Ved Vyas that had caused Shanti Prasad Jain such agitation and after he had had careful consultation with a number of counsel. In any event, *Mr. Ved Vyas was present at that hearing* and one would have thought that here was the chance to repudiate what he had said, or at any rate to say that there had been some misunderstanding which Shanti Prasad Jain wanted to clear up and that in view of that, he would withdraw what had been said by Mr. Ved Vyas and make it quite clear that he did not intend to hide behind Article 20(3) on any point.

After this there were public hearings on 17-3-60 and 23-3-60 but again there was no repudiation and we were still left with the impression that Shanti Prasad Jain still intended to claim the protection of Article 20(3), with the modification that he would not claim it on the issue of partition. Incidentally, this seemingly public spirited offer to waive the protection of the article on this point had no meaning at all because Shanti Prasad Jain had not been accused of any offence arising out of a partition. So no question of Article 20(3) could arise.

On 2-4-60, Messrs. Bhagwati and Shah called at the Office of the Commission and asked to see the Chairman in connection with a letter, dated 30-3-60 written by Mr. Shah on behalf of Shanti Prasad Jain. The Chairman and Member, Mr. Chaudhuri, saw them both in the Chairman's office. They were told that the matter would be considered at the next internal meeting

on 4-4-60 when the Accountant Member, Mr. Mody would also be present. They wanted an early hearing of the application and asked us to sit on 8-4-60, a day on which we had not intended to have a public hearing. To suit their convenience we had a public hearing on that day just to hear this application and one of 18-3-60.

One of the matters raised by Mr. Bhagwati was that Shanti Prasad Jain was uneasy and upset over the publicity that the proceedings of the Commission were receiving in the press and wanted us to tell the press not to use the expression Dalmia Jain Group and asked us not to use it ourselves. Mr. Bhagwati spoke about this in connection with an application of 18-3-60. He also said that Shanti Prasad Jain was very upset over the publicity that had been accorded to Mr. Ved Vyas' statement and that Shanti Prasad Jain had told him, Mr. Bhagwati, that Mr. Ved Vyas had no business to make such a statement and that Shanti Prasad Jain had not instructed Mr. Ved Vyas to appear for him. This was on 2-4-60. There was no mention of this in Mr. Shah's application.

The Chairman said that if that was true he would have to take serious notice of Mr. Ved Vyas's conduct and was about to record Mr. Bhagwati's statement. Mr. Bhagwati then immediately withdrew it and said that that was what Shanti Prasad Jain had told him but that he was not prepared to make any such statement.

Now it so happens that our order of 14-3-60 contained the following remarks. This was the order in which we dismissed Mr. Bhagwati's application asking that the issue of partition be decided before the other matters were taken up. The letter of Mr. Shah, dated 30-3-60 was really an application for review of that order.

The order said,

"On 27-10-59 there was a public hearing in which Shanti Prasad Jain and R. Dalmia. . . also claimed the protection of Article 20(3) on the ground that they were apprehensive that their answers might tend to incriminate them in respect of a series of charges that had been made against them."

It continued,

"Shanti Prasad Jain and R. K. Dalmia were represented by the same counsel Mr. Ved Vyas. Shanti Prasad Jain did not raise the issue of partition and did not say that his interests in this respect were in conflict with those of R. K. Dalmia in that, if anything improper occurred, Shanti Prasad Jain had nothing to do with it and, because of the partition, knew nothing of the matter. *Had their interests been conflicting one would have expected them to be represented by different counsel.*"

It is obvious that Mr. Bhagwati's instructions were the direct outcome of those remarks.

In one of our public hearings in October or November 1961, Mr. Shah adopted the same attitude as Mr. Bhagwati. When his attention was drawn to Mr. Ved Vyas's statement he very indignantly repudiated it and repeated what Mr. Bhagwati had told us; but the moment the Chairman started to record it he at once withdrew and said that he was not prepared to make any statement about the matter.

The first public repudiation came from Shanti Prasad Jain 24 years later, on 30-1-62, when he was driven to it in the witness box; and even there the repudiation of Mr. Kapur did not come at once. Shanti Prasad Jain's attention was drawn to Mr. Kapur's letter of 10-8-59 and we said,

"Your reply comes on 10-8-59. You sent a reply through Mr. Kapur claiming protection under Article 20(3) of the Constitution."

All that Shanti Prasad Jain said at that stage was,
"I find it there."

He did not then say that the claim to the protection of Article 20(3) was unauthorised. He did not make this repudiation till he was pressed more strongly about Mr. Ved Vyas after six typed pages of questioning. Needless to say, after what we have set out above, we do not believe him when he says that Messrs Kapur and Ved Vyas exceeded their instructions.

In the end we get back to this. The questions that we asked on 27-12-58 and 10-6-59 were not answered, except in one case partially; *and the books and vouchers that we asked for were not produced.* Some sort of objection was taken about section 5(2) to the *questions* but no objection was taken in those replies to our right to demand the production of the *books* under Section 4(b). There was silence and non-compliance with our order.

We come next to the production of the books; and at this point we pause to remark that there was a marked contrast between the conduct of J. Dalmia and Shanti Prasad Jain in this behalf. The former, at any rate, did not try to hide what little, in the end, he did produce; and despite the imperfections in his books and in the file of vouchers he placed them frankly before us for our inspection. Shanti Prasad Jain continued evasive and secretive to the end in respect of these books.

J. Dalmia filed the list of documents on which he intended to rely on 4-1-61 and Shanti Prasad Jain on 9-1-61. J. Dalmia filed copies of the entries in his books on 17-1-61 and Shanti Prasad Jain on 22-7-61. But they did not produce the originals for comparison. J. Dalmia's books and vouchers were produced on 25-10-61, the day on which Fateh Chand Bhutani (W 17) and Laxmi Shankar Lal (W 18), who were called to prove these entries, were examined.

Now it is obvious that there can be no thorough cross-examination about books that are produced for inspection at the time the witnesses are being examined. The cross-examination of these two witnesses was adjourned for two days to give Mr. Petigara time to look through the books; but that again was unsatisfactory.

Seeing the difficulty that Mr. Petigara experienced over J. Dalmia's books Mr. Shah was asked on 21-12-61 about the originals of the copies that he had filed of entries from Shanti Prasad Jain's ledger and journal. He said that he would produce the originals whenever desired. Accordingly a letter was sent to him on 30-12-61 directing him to produce the originals on 15-1-62. They were produced on 17-1-62 but Shanti Prasad Jain refused to allow them to be inspected. Mr. Shah said that,

"he is willing to show the entries of which he has given copies but is not willing to allow inspection of the rest unless some particular entry is asked for."

The very cursory examination that Mr. Petigara was able to give to J. Dalmia's books revealed that there was much in them that required explanation. Shanti Prasad Jain's journal and ledger were written by the same scribe, Laxmi Shanker Lal, and there was grave suspicion that the same manipulations and irregularities that had been found in J. Dalmia's book would also be found in those of Shanti Prasad Jain. It is obvious that this sort of thing could not be traced by an inspection of the kind offered above. Anyway, the books were taken away after the entries had been compared with the copies; a process that naturally revealed nothing.

After this brief revelation, the books were not produced again till 23-1-62 when Laxmi Shanker Lal (W 18) was recalled by Shanti Prasad Jain to prove the entries on which he relied.

On Saturday, 20-1-62, Mr. Shah told us at the end of the day that his objection to inspection of the books only applied to Mr. Petigara and the office and not to the Commission. It will be observed that it took his client three days to think this over and that we were told this just before we closed down for the week end.

The books appeared again on 23-1-62 when Laxmi Shankar Lal (W 18) was recalled by Shanti Prasad Jain. Mr. Shah repeated what he told us on the Saturday at the opening of his examination of this witness. In the circumstances the cross-examination of this witness about the personal books of Shanti Prasad Jain could only be perfunctory. It had to be directed to general questions and the practice in the office. When we came to comment on these account books we will see that these tactics were deliberate.

There is another point. J. D. Dalmia produced the vouchers and his counsel very rightly and properly let us have the entire file. Shanti Prasad Jain produced no vouchers. After some preliminary fencing in the witness box he said that they had been destroyed long ago in the normal course. 'But why did it take him over 3 years to say this? We called for the vouchers relating to some of the entries on which he now relies in proof of his case of partition on 27-12-58 and 14-10-59, and we issued 5 reminders in the course of the following year. The last was sent on 16-1-60. There was no reply. No privilege was claimed: no protection was asked for; surely we could have been told that they were no longer in existence when we issued our summonses if that was the truth.

The same criticism applies to these books. They have been produced to prove, among other things, the very transactions about which we sought information on 27-12-1958 and 14-10-1959. They would have helped to show whether Shanti Prasad Jain had any connection with Allenberry and D.C.P.M. at the dates we had in mind. They would have shown in 1958 and 1959 just as clearly as Shanti Prasad Jain says they show now whether there was a partition on 31-5-1948 or not. He clearly thinks that they are relevant and important because he has produced them and has relied on them to prove his case. We tried to get information about these matters and probe into them but came up against a blank wall. It is hardly surprising if we now draw the conclusion that either he was afraid his books would not bear close scrutiny and that with time at our disposal unpleasant facts might be unearthed; or that the books did not at that date contain what we now find in them. We can think of no other rational reason for not producing these books for 3½ years. When we come to look into the books themselves we will see that there is much in them to justify this criticism.

A curious incident occurred about the inspection of J. Dalmia's books. Mr. K. C. Jain appeared for J. Dalmia and he handed over in person J. Dalmia's account books and the file of vouchers pertaining to them to Mr. Petigara openly and publicly in the presence of us all and said, very rightly and properly and in keeping with the best traditions of the bar, that his client did not want to hide anything and that he had no objection to Mr. Petigara inspecting the books and file of vouchers. At a later stage, Mr. Shah, *who did not appear for J. Dalmia* entered a very strong and indignant protest against the fact that Mr. Petigara had been allowed to see these books and vouchers and examine them. He said that the procedure was "unheard of" and "most improper".

We will revert here to Shanti Prasad Jain's conduct in directing two public limited companies to withhold from us information that was relevant and necessary for the purposes of our inquiry. Again the relevancy and admissibility of the information that we sought is evident from the fact that Shanti Prasad Jain himself introduced into evidence the very matter about which we sought information on 10-6-1959, 3½ years earlier.

Now a public limited company whose affairs are not under investigation is in the same position as an outside witness in a case in court. If a witness is summoned to appear for the purposes of giving evidence in the case and to produce books it is his duty to produce the books and then, if he wants to, to take such objection as he wishes to their production. It is an offence for one of the parties to the litigation to suborn that witness and direct him to withhold the evidence and information that is sought from him and tell him not to produce the books that have been called for. This is precisely what Shanti Prasad Jain did in the case of these two companies. This is also the attitude he adopted when J. Dalmia did something that he did not like, namely, allow his counsel to hand his account books and vouchers over for the inspection of Mr. Petigara. It is clear that he has been trying to prevent too close an investigation into these account books all along and that he did his best to keep them away till the very last moment when he was compelled to produce them or have his case about dissolution disbelieved out of hand. It is obvious from the fact that the books were produced and relied on by Shanti Prasad Jain, that no objection could have been taken to their production at the date on which we had asked for them.

CHAPTER VII

ACCOUNT BOOKS OF J. DALMIA AND SHANTI PRASAD JAIN

We will now examine the account books in so far as they relate to the Lauriya farm transaction. This farm, which was jointly held by R. Dalmia, J. Dalmia and Shanti Prasad Jain, was sold to the last named by the first two. Therefore, though the entries in the books of J. Dalmia and Shanti Prasad Jain record a sale and a purchase respectively, such entries bear an identical pattern in the books of J. Dalmia and Shanti Prasad Jain.

There are several entries about this transaction. Some are said to have been entered by mistake and it is said that they were corrected by means of adjustment entries. It is admitted, by Shanti Prasad Jain in the witness box and, as we shall see, proved beyond doubt, that none of the entries was made on the date under which it appears. The questions therefore are, (1) when were the respective entries made; (2) what was the order in which they were made; and (3) which was the mistaken entry that had to be corrected; or (4) whether there was a mistake at all.

In order to understand our analysis of these entries it will be necessary to label them.

May 31st entries : JDA and SPA

First there are entries in each set of books under date May 31. We will call them JDA in J. Dalmia's books and SPA in those of Shanti Prasad Jain. In J. Dalmia's journal, Ex. J. 29, the entry JDA is at page 48 and in the ledger, Ex. J. 33, it is at page 104. The voucher number is 27. The entry is as follows :

May 31	Seth S. P. Jain	1,35,000
	To Investment in Lauriya farm shares.	
	Being the amount of Lauriya farm shares sold to the former.	1,35,000

In Shanti Prasad Jain's journal Ex. S 176, the corresponding entry SPA under date May 31 appears at page 24 and in his ledger at page 104. The figure in this case is also 1,35,000.

We will make the following comments about entries :

- (1) In all the four books these entries are in blue coloured ink;
- (2) In the two journals the entries on the preceding 3 or 4 pages, including other entries of May 31, and dates prior to it, are in a different coloured ink of a black shade. We will call this colour black;
- (3) In both journals the entries that follow the Lauriya farm entry of May 31 entry are in the same kind of black ink as those that precedes it for about 20 or 24 pages right down to the 31st of August.

- (4) In both journals they are the last entries on the respective pages on which they are written. They could therefore have been entered at any time.
- (5) The pattern of entries in the two ledgers is the same.
 - (a) The Lauriya farm entry is entered "as on May 31" at ledger folio 104 in both books and they are in blue ink;
 - (b) The entry above it in both books is of June 26th, 1948 and is in the kind of ink that we have called black;
 - (c) The six entries that follow them are under date August 31 and are also in the same kind of black ink;
 - (d) The Lauriya farm entry is not in chronological sequence with the ones before and after them. In both ledgers the entry above the May 31 entry is under date June 26, 1948, and the ones under it of date August 31, 1948. The sequence June, May, August *in the same year is wrong*;
 - (e) In both cases there was originally a blank line between the June 26th entry and the first of the August 31 entries. The Lauriya farm entry of May 31 has been squeezed in on the blank line and this could have been done at any time, even several years later.

September 30 entry JDB and October 31 entry SPB

We will now turn to the next set of entries that relate to the Lauriya farm. We will call them JDB and SPB. In J. Dalmia's books JDB appears under date September 30 and in Shanti Prasad Jain's books SPB appears under date October 31. These dates are the last dates of the accounting years of J. Dalmia and Shanti Prasad Jain respectively.

These entries relate to the same transactions as JDA and SPA under date May 31.

In J. Dalmia's journal the entry is at page 95. It is as follows.

September 30	Syt. S. P. Jain	1,35,000
	To investment in Lauriya farm shares	
	Being the amount of Lauriya farm shares sold to former as per letter.	1,35,000

The voucher number is 48. The corresponding ledger entry is at page 104.

In Shanti Prasad Jain's journal the corresponding entry SPB is at page 70, and in the ledger at page 104. The figure here is also 1,35,000. In his books there is also another figure of 1,50,000 which was the price of R. Dalmia's share in the farm.

In both journals the entries are the last entries on the pages in which they appear and so could have been inserted at any time.

September 30th entries JDC & JDD and October 31st entry SPC

Next follow the entries about the profits from the Lauriya farm. The figure is 68,078-1-0. In J. Dalmia's journal these entries are at page 96. There are two entries about this there. His practice, as is evident from the

entries, was to record his share of the profits from the Lauriya farm by a debit to Shanti Prasad Jain's account in his (J. Dalmia) ledger.

The corresponding entry SPC in Shanti Prasad Jain's journal is at page 71; but in this case there is only one entry about the figure 1,35,000. We have called it SPC.

The corresponding entries in both ledgers are at page 104.

September 30 reversal entry JDE and October 31 reversal entry SPF

These entries also relate to the Lauriya farm. They appear under date September 30 at page 96 of J. Dalmia's journal, and at pages 73 and 74 of Shanti Prasad Jain's journal under date October 31. The corresponding ledger entries are at page 104 in both ledgers.

These are reversal entries and purport to reverse the entries JDB, JDC and JDD in J. Dalmia's books and the entries SPB and SPC in Shanti Prasad Jain's books.

The entries that correspond to these reversal entries are at page 104 in both ledgers.

The question is whether the reversal entries were made because there was a genuine mistake as alleged, or whether it was done deliberately to enable entries to be interpolated under date May 31.

The reversal entries follow immediately after the entries that we have just described.

September 30 reversal entries JDF & JDG and October 31 reversal entry SPF

These entries follow immediately after JDE and SPE and reverse the entries relating to J. Dalmia's share of the Lauriya farm profit, namely, 68,078-1-0.

It was the practice in previous years to divide the profits from the Lauriya farm in certain shares. J. Dalmia's share in the year ending 30-6-1948 was 68,078-1-0. This was credited to him under date September 30 just as if there had been no sale in pursuance of a dissolution on 31-5-1948.

It is the case of Shanti Prasad Jain and J. Dalmia that this was wrong because the agreement between them was that the entire profit for that year should go to Shanti Prasad Jain despite the fact that the sale was to take place on May 31 and so, in the ordinary way, the others would have been entitled to 11 months profit. In view of this mistake they say that the entries were reversed and the profit for the entire year was credited to Shanti Prasad Jain.

We will now set out the story that Shanti Prasad Jain and J. Dalmia put out about these entries. J. Dalmia and Shanti Prasad Jain led evidence to prove their case that there was a partition as on 31-5-1948 in which the farm was assigned to Shanti Prasad Jain and that the transfer to him which was to take effect from 31-5-1948, was affected by means of entries in the books of account. Their case is that, as the sale deed of the farm already

stood in Shanti Prasad Jain's name there was no need to execute any formal document to effect the transfer; it was enough to make entries in the books and that that in itself affected the sale.

Before we look into the books we will examine the evidence about the practice in this office about the maintenance of these books because it will be seen that the normal practice of that office was departed from in the case of these entries.

Laxmi Shankar Lal (W 18) scribed the entries in the books that we have just described. He is a clerk in the accounts office of Rohtas Industries Ltd. and had worked in that capacity from 4-10-1941. He worked under Raj Kumar Lal Srivastava who was the accountant in 1948 (Srivastava was called as a witness but was given up on 27-10-1961).

It was the duty of Srivastava to maintain the personal account books of R. Dalmia, J. Dalmia and Shanti Prasad Jain. Among these books were the two journals and ledgers that we are now considering. Laxmi Shankar Lal wrote these books under the direction and supervision of Srivastava. Laxmi Shankar Lal says that he (Laxmi Shankar Lal) wrote the personal accounts of Shanti Prasad Jain till October 1948 and those of J. Dalmia till 30-9-48. It will be important to bear this in mind.

Srivastava was also the accountant in charge of the books of Rohtas Industries Ltd. and Dalmia Jain and Co. Ltd. He worked continuously for these companies from 1941 down to 1948. Laxmi Shankar Lal does not know whether Srivastava kept the personal accounts of R. Dalmia, J. Dalmia and Shanti Prasad Jain in 1949. It is important to bear this also in mind.

Mukteshwar Prasad (W 25) was also a clerk in the account department of Rohtas Industries. His actual work was connected with Dalmia Jain and Co. but his salary was paid by Rohtas Industries and he worked in the accounts department of that firm. He also worked under Rajkumar Lal Srivastava.

As far as we can make out, all three worked in the same office, the two clerks attending to different sets of books with Srivastava in overall charge of them.

We gather that the practice in the office about the posting of the entries was this :

- (1) First the advice would be received by the accountant;
- (2) Then the voucher would be prepared and numbered. It would either be written by the accountant or would be written by one of the clerks under his direction. Both witnesses are agreed about this;
- (3) On the basis of the voucher an entry would be made in the Journal.

The entry was not necessarily made on the same day but "not more than 2 or 3 days later" according to Laxmi Shankar Lal, and not more than 3 or 4 according to Mukteshwar Prasad;

- (4) It was admitted before us that after the entry is made in the journal it is posted in the ledger.

- (5) There is a difference of opinion between the two clerks on the following point.

We have seen that there is sometimes a time-lag of 2 to 4 days between the preparation or receipt of the voucher and the entry in the journal. We gather from Laxmi Shankar though he does not actually say so, that in that event the entry would bear the same date as the voucher. But Mukteshwar Prasad is quite definite about the practice in a case of that kind. He said, "Suppose a voucher dated 20th of a particular month was received by me two days later, then the entry would be 22/20th."

However, as Shankar Lal was not asked about this and as Mukteshwar Prasad did not write the books that we are concerned with, we will take it that the entry in the journal would bear the same date as that in the voucher. The important point is that in no event would the writing of the entry be delayed by more than 4 days.

We will now turn to the entries in question. Laxmi Shankar Lal is the only one who speaks about them. He was only cross-examined in any sort of detail about J. Dalmia's journal, Ex. J 29. For the reasons given earlier no detailed cross-examination about Shanti Prasad Jain's books was possible. But as Laxmi Shankar Lal wrote both sets of books, and as the general pattern is the same in both sets, what we say about J. Dalmia's journal and ledger will apply with equal force to those of Shanti Prasad Jain. For the present our observations relate to J. Dalmia's journal, Ex. J 29.

The first thing that Laxmi Shankar Lal told us was that the entry JDA at page 48 of the journal under date 31-5-1948,

"was made on 31st May, 1948."

This was in answer to almost the last question that was put to him on 25-10-1961. He was called back for cross-examination two days later so he had had plenty of time to think this over by the time he was questioned about it again on the 27th when he was recalled. He was asked, on the 27th,

"Do you still maintain that Voucher No. 27 dated 31-5-1948 (Ex. J 40) was made on 31st May, 1948 and the entry in the journal relating to this voucher (Ex. J 40) was made *on the same day*, i.e., 31-5-1948."

His reply was,

"The entry was made on 31-5-48."

After some more questions he was again asked,

"I put it to you that your explanation is totally incorrect and the entry of 31st May was never made till such date as the subsequent entries were made."

But he insisted,

"I maintain that the entry in the journal regarding Voucher No. 27 dated 31st May, 1948 was made *on the same day* and not subsequently as suggested by you."

There can be no doubt about what he meant and there is no equivocation in his statement. He is clear that the entry under date 31-5-1948 was made on 31st May, 1948.

We take it that his answer would have been the same in respect of entry SPA at page 24 of Shanti Prasad Jain's journal.

We will now turn to the entry JDB at page 95 of the journal Ex. J 29 under date 30-9-1948. Here again Laxmi Shankar Lal insists that this was written on 30-9-1948 and not merely entered under that date; or at the very outset one or two days later. He repeated this three times. The last question put to him on this point was,

"I put it to you that Voucher No. 48, dated 30th September, 1948 was not made by you on 30th September, 1948 or near about that."

He replied,

"30th September was the closing year and it might be that the voucher was prepared a day or two later of the closing of the month. I am certain that it was not much later than one or two days of the closing of the year."

Again, we take it that his answer would have been the same in respect of entry SPB in Shanti Prasad Jain's journal with the difference that according to the witness, the entries would have been made on 31-10-1948 or within 2 days of it.

We now come to the reversal entries at page 96 of Ex. J 29.

Laxmi Shankar Lal admitted that entries JDA and JDB relate to the same transaction so he was asked why there were two vouchers for the same transaction, one dated 31-5-1948 and the other dated 30-9-1948. His answer was,

"After book entry" (JDB) "had been made on the 30th September regarding Voucher No. 48 it was detected that posting had already been made in the ledger regarding that transaction and therefore the entry was reversed."

After further questioning he still maintained that

"I had prepared the voucher on 30th September, 1948."

It was put to him,

"I suggest that your answer is a complete lie."

But he persisted,

"I maintain that this voucher was prepared on 30th September, 1948 on the dictation of Rajkumar Srivastava."

Here again the answer would have been the same in respect of Shanti Prasad Jain's books with the exception that 31-10-1948 would have been substituted for 30-9-1948.

It was suggested to the witness that these entries were not made till after 28-2-1949, the date of the letter, Ex. J 60, which was shown to the witness. But he continued adamant and said "no".

There can, therefore, be no doubt that Laxmi Shankar Lal's story is that the entry JDA was made first, on 31-5-1948 itself, and that entry JDB was made after it on 30-9-1948 or within 2 days of it.

Now we come to the reversal entry JDE. Here again the witness is adamant that the reversal entry was made at the same time as JDB and on the same date, namely 30-9-1948. And this is not only the gloss of the witness but is the story that he was brought into the witness box to tell because the question was put to him by J. Dalmia's counsel. Mr. K. C. Jain asked him,

"Is it a fact that the entry on 30th September, 1948 at page 95 of Ex.—29" (entry JDB) was reversed on the same day and the reversal entry" (JDE) "was made on page 96"?

He replied,

"The reversal entry was made on the same day, that is, 30th September, 1948. The main entry and its reversal entry on page 48, Ex. J 33, were also made on the same day, i.e., 30th September 1948."

The witness said this on 27-10-1961. He was re-called by Shanti Prasad Jain on 23-1-1962, and in order that there should be no mistakes or misunderstanding he was again questioned about this matter after he had had three months to think it over and examine the books. So he had plenty of time to study the position. The question was put to him by the Commission and related to Shanti Prasad Jain's journal. The question was,

"Kindly refer to journal folio No. 70 and 73 for 31-10-1948 and explain to me the two entries of 2,85,000."

These two entries were, one of 1,35,000 which we have been examining, and the other of 1,50,000 which was the price that R. Dalmia received from Shanti Prasad for his share in the Lauriya farm. The two were related. The witness answered,

"The entry at page 70" (this is a mistake for page 24 : entry SPA) "was made in the month of May, 1948. At the time of posting the entry at page 70" (entry SPB) "I discovered that it had already been made in May. Therefore I reversed the entry at page 73" (entry SPE).

There is an other reason why, if the witness is telling the truth, none of these entries could have been written in 1949; and if they were, they could only have been forged manipulations. The reason is this.

- (1) The witness said that he wrote the accounts of J. Dalmia till 30-9-1948 and not thereafter. This was brought out by Mr. K. C. Jain in re-examination, because earlier the witness had said that he wrote the books of J. Dalmia up to 1948;
- (2) The witness also said that he wrote the books of Shanti Prasad Jain till October, 1948;
- (3) He said that the vouchers relating to the entries were given to him or dictated to him by Rajkumar Lal Srivastava first, and that after that he made the entries in the books; and
- (4) He said that Rajkumar Lal Srivastava maintained the personal accounts of R. Dalmia, J. Dalmia and Shanti Prasad Jain in 1948; and he said,

"I cannot say if Rajkumar Lal Srivastava kept the personal accounts of Shanti Prasad Jain in 1949 as I have been assigned other duties under him."

It is quite clear then, that Laxmi Shankar Lal could not have made any of these entries after October 1948, because, if he had, he would have known that Srivastava was still in charge of the personal accounts at the date on which the entries were made.

Now that was also the story that Shanti Prasad Jain put forward in his examination-in-chief though he gave it a different gloss when confronted with irrefutable facts that showed that his original story would not hold water. It is, therefore, clear to us that the story that Laxmi Shankar Lal told us in the witness box was the one that he had been instructed to tell. We can see no reason why a man like Laxmi Shankar Lal, who has nothing to gain from the sale of the Lauriya farm, should go out of his way to tell a false story and *persist in it* after 3 months' time for reflection and for enquiries about the facts. It cannot be accident that this false story fits in so exactly with the story that Shanti Prasad Jain had set out to prove. We are convinced that the witness told us what he had been instructed to tell us; and that he persisted in it for that reason.

Shanti Prasad Jain said in examination-in-chief, in reply to a question put by his counsel, Mr. Misra,

"The *transfer* took place in May 1948 and the annual accounts of this joint property was, so far as I remember, June of every year and the profits up to June 1948 were credited to the account of Shanti Prasad Jain and no profit went to the shares of R. Dalmia and J. Dalmia."

He was asked by the Commission,

"You said the *transfer* took place in 1948, what exactly do you mean by that."

He replied,

"In the books of account of the three persons the ownership of Pitaji and Chachaji in the farm were transferred to me and it is represented by the book entries in respect of books of persons."

We have already referred to the application of 1-3-1960 where there is no equivocation about this.

"In pursuance of the decision taken about the middle of April 1948 as aforesaid, the separation was *worked out* and *finalised* by the end of May 1948."

* * * * *

"The fact that the aforesaid separation of business interests was affected among Shri R. Dalmia, Shri J. Dalmia and the Applicant at the end of May 1948, will be borne out, *inter alia*, by the following facts and circumstances,

* * * * *

The applicant accordingly got the share, right title and interest of Shri R. Dalmia and Shri J. Dalmia in the said farm for the Price of Rs. 1,50,000 and Rs. 1,35,000 respectively on 31st May, 1948."

Now, howevermuch a severance of joint status, such as that of a joint Hindu family can be affected nationally, that only applies to the division of

title, whereas the parties held the joint property as joint tenants up to the date of severance of status they thereafter hold the joint property as tenants-in-common. But the property does not pass out of the joint family and become the exclusive property of a separated member until there has been an actual demarcation by metes and bounds; and it makes no difference that the joint property is held in the name of only one member of the family. Even he cannot get the property that stands in his exclusive name until there has been an actual demarcation; and that demarcation has to be evidenced by some overt act. The act that is supposed to have completed the transfer in the present case is the entries in the account books. It is possible, by agreement, to give retrospective effect to a transfer that is made at a subsequent date but the date of the transfer is the *date on which it is actually affected* and the retrospective aspect of it is only a matter of adjustment of rights and liabilities that are consequential on the transfer, such as an adjustment of profits and so forth.

Anyway, if Shanti Prasad Jain's subsequent explanation is the truth then why should Laxmi Shankar Lal have persisted so obstinately in repeating a patent lie time after time, *even after three months for consideration?*

We will now show this story, so elaborately built up, collapses like a pack of cards.



CHAPTER VIII

CHRONOLOGICAL SEQUENCE OF ENTRIES

We will first direct our attention to the order, in point of time, in which the entries JDA and JDB in J. Dalmia's books, and SPA and SPB in Shanti Prasad Jain's, were made. As we have seen, the story put forward in the evidence of the scribe was that JDA and SPA were entered first, in May 1948; and that JDB and SPB were entered several months later, one in September 1948 and the other in October. That is demonstrably untrue.

We will first see whether the entries JDA and SPA could have been made in May 1948 or on any date near that. The figure on which we will have to concentrate is 1,35,000.

We will first look at page 104 of both ledgers. In J. Dalmia's ledger this page contains Shanti Prasad Jain's account; and in Shanti Prasad Jain's ledger the page bearing the same number (104) contains J. Dalmia's account. The figures in both books are the same except that in one book the entries that appear in the Cr column are entered in the Dr column in the other; and *vice versa*.

In both books a balance of Rs. 8,53,278-7-2 is transferred to D.C.P.M. at the end of August 31. If we omit the Lauriya farm entries JDA and SPA which we say were subsequent interpolations, we get the following figures up to the end of August 31.

88	10	8	..	..	..	..	..	..	2,80,010	0	0
623	7	0	..	..	..	..	..	..	55,197	5	1
623	7	0	..	..	..	..	..	..	4,375	0	0
									5,15,031	10	9
1,335	8	8									
			..	..	..	..	..	..	8,54,613	15	10
									1,335	8	8
									8,53,278	7	2

This amount of Rs. 8,53,278-7-2 was transferred to D.C.P.M. by a journal entry (No. 66) as of August 31st 1948, and the entry and its narration reads as under :—

"Syt. S. P. Jain	..	..	..	..	..	..	8,53,278-7-2
To Messrs D.C.P.M. & Co. Ltd., Dalmianagar	..	..	..	..	..	..	8,53,278-7-2
Being the credit balance of the former transferred to the latter."							

Had the entry of May 31st to the debit of Shanti Prasad Jain not been an interpolated entry, then the balance to be transferred to D.C.P.M. to close Shanti Prasad Jain's account would have been reduced by Rs. 1,35,000 to Rs. 7,18,278-7-2. Therefore, if we take into account the interpolated entry and assume it to be genuine, a transfer of only Rs. 7,18,278-7-2 was necessary, and not Rs. 8,53,278-7-2 as was actually passed.

We will now proceed to the next set of entries on page 104. In both books there is a blank line after the last entry of August 31. A cursory

glance through the books shows that that was the normal practice : a blank line was usually left between the last entry of a month and the first entry of the next month. There are very few exceptions to this rule.

The next set of entries are under date September 30 in J. Dalmia's ledger and under date October 31 in Shanti Prasad Jain's ledger. But in both books the figures are the same except that in J. Dalmia's books S. P. Jain is debited and in S. P. Jain's books J. Dalmia is credited. These entries are the last on page 104 in both books. They are 7 in all in each book.

The third entry is a balance of 39,961-14-0 transferred to D.C.P.M. The four entries below it relate to the Lauriya farm. We will ignore these for the moment. The two entries above the third are as follows :

14,882-15-0
25,078-15-0
39,961-14-0

This is the exact balance transferred to D.C.P.M. in the third entry on September 30 in J. Dalmia's books and October 31 in those of Shanti Prasad Jain's. Again, this balance would have been impossible if the figure of 1,35,000 had been there under date May 31. It is, therefore, clear that the May 31 entry had not been inserted even on October 31.

We will now revert for a moment to Laxmi Shankar Lal's evidence. He was asked,

"In regard to all ledger accounts when is the balancing done?"

He replied,

"The balancing is struck immediately after the entries are posted in the ledger.

* * * *

The balance in the ledger used to be struck at the end of the month."

Against the entry of 39,961-14-0 which is the balance transferred to D.C.P.M., the word "nil" was written in the balance column in pencil in J. Dalmia's ledger but was subsequently erased. It is however still visible, especially under a magnifying glass. It is a reasonable inference that the transfer of that balance to D.C.P.M. closed the September transactions in J. Dalmia's book and that the October 31 entry closed the October transactions in Shanti Prasad Jain's book. Also that the last four entries relating to the Lauriya farm were made after October 31. We will develop this later. At the moment it is enough to show that Laxmi Shankar Lal's insistence that the May 31 entry was made on May 31, or within a few days of it, is false.

Now we said that it is reasonable to infer that the transfer of the balance of 39,961-14-10 to D.C.P.M. closed the September and October transactions in the two books and that the entries that come after it were made after the balance at the end of those months had been struck. In both cases the balance at that point was nil. This inference is reduced to a certainty by reason of the following facts.

The Lauriya farm was admittedly joint property at one time. Its accounting year closed on June 30. It was the practice to divide up the profits from

the farm at the end of each year among the three members of the D. J. group in certain proportions and, when the advices were received from the farm at the end of each accounting year, to credit the various members of the group with their share of these profits.

At page 104 of Dalmia's ledger the entry that immediately follows the transfer entry of 39,961-14-0 is an entry of 1,35,000 (entry JDB). Immediately after that is an entry 68,078-1-0 being the "amount transferred from Lauriya farm account." This sum was J. Dalmia's share of the profits from the farm for the farm year ending 30-6-48.

Now advices from the Lauriya farm about the profits were not received by the accountant, Rajkumar Lal Srivastava, till February 1949. So it was not possible to tell what the profits would be, or, in fact, whether there would be a profit at all, till the farm accounts were settled. In the meanwhile the trial balances and profits and loss accounts of the three members of the group had been prepared by Rajkumar Lal Srivastava without waiting for the advices about the profits from the Lauriya farm, and these were despatched to Shital Prasad Jain. Quite naturally, these trial balances and profit and loss accounts did not include these profits as the advices from the farm had not then arrived. This is proved by Ex. 363/P. 265, a letter written by the accountant, Rajkumar Lal Srivastava at Dalmianagar to Shital Prasad Jain. It is dated 25/26 February 1949 and is as follows,

"Respected Syt Shital Prasad Ji,

I have received the advices from the Lauriya farm dated 30-9-49 for the profit for the year ended June 1948 in the name of R. Dalmia, Seth J. Dalmia and Seth S. P. Jain for Rs. 75,642-4-6, Rs. 68,078-1-0 and Rs. 7,564-3-5 respectively. *These amounts were not shown in their profit and loss a/c's as the advices were not received by the time when the trial balance and profit and loss a/c's were sent to you. This is for your information. The adjustments will be made in their books as on 30-9-48 and 31-10-48.*

Yours obediently,

Rajkumar"

This letter was in the voucher file produced by J. Dalmia.

It is clear then that the entries of 68,078-14-0 and 7,564-3-5 were made after February 1949 in the journals and ledgers of both J. Dalmia and Shanti Prasad Jain. It is also clear that Laxmi Shankar Lal's repeated assertions that they were made on 30-9-48 and 31-10-48 or soon after is false.

Another thing follows from this. Laxmi Shankar Lal tells us that he wrote the personal accounts of J. Dalmia up to 30-9-48 and not thereafter, and in the case of Shanti Prasad Jain, up to 31-10-48. He also told us that he could not say whether Srivastava was maintaining the personal accounts of Shanti Prasad Jain in 1949 because the witness had been assigned different duties by then. That means that he was no longer writing the personal accounts of these two gentlemen after 31-10-48; and yet all these entries about the Lauriya farm are in his handwriting. This shows that he was taken off whatever other work he was doing for the special purpose of manipulating these books.

We will now examine the two entries of 68,078-1-0 and 7,564-3-5 a little further. At page 94 of J. D. Dalmia's ledger (also at page 96 of the journal : entry JDD) we find the following under date September 30.

"By Balance transferred to Seth S. P. Jain a/c."

It is our view that the entries JDB, JDC, JDD and the corresponding entries in Shanti Prasad Jain's books were made after the 8th of March, 1949 because of the letter of 7/8 March, 1949.

If we turn to the entry JDB at page 95 of J. Dalmia's journal we find the following narration against the entry JDB of 1,35,000 under date September 30 :

"Being the amount of Lauriya farm shares sold to the former" (that is Shanti Prasad Jain) "*as per letter.*"

The voucher for this entry is numbered 48 and was in the voucher file produced by J. Dalmia. It has been marked Ex. J 50. Attached to the voucher was the letter referred to in the narration just quoted.

That is a letter (Ex. J 60) dated 7/8 March, 1949 written by H. D. Bishnoi at Dalmianagar, with copies to the accountants of the three members of the group. As the entry JDD makes reference to this letter it is obvious that the entry could not have been made before the letter was received by the accountant Rajkumar Lal Srivastava in March, 1949.

Copies of this letter were sent to the accountants of R. Dalmia, J. Dalmia and Shanti Prasad Jain. Actually all three of them had only one accountant between them for their personal accounts, namely Rajkumar Lal Srivastava. But, despite that, three copies of this letter were sent, presumably to enable one copy to be attached to the relevant voucher in each of the three accounts. The letter is in the following terms.

"Regarding entry for sale of Seth R. Dalmia and Seth J. Dalmia's share to Lauriya farm to Seth S. P. Jain, I have advised the accountant to pass the entry on book value as on 30-9-48 in the Book of Seth R. Dalmia and Seth J. Dalmia and corresponding entry in the books of Seth S. P. Jain on 31-10-48 and also to send the hundi as desired by you. Regarding entry of profits for Farm's year ended June 1948 I am of opinion that entry of profits be passed in the books of the partners and have advised the accountant to pass the entry in their books for the year ended 30-9-48 and 31-10-48 respectively.

At the foot there are these postscripts :

- "c.c. to the Accountant, Seth R. Dalmia to pass the necessary entry in his books.
- c.c. to the Accountant, Seth J. Dalmia to pass the necessary entry in his books.
- c.c. to the Accountant, Seth S. P. Jain to pass the necessary entry in his books."

Now it is reasonable to assume, that this letter was written in the ordinary course; and if it was written in the ordinary course and was received from the head accountant, H. D. Bishnoi at Dalmianagar, it is

reasonable to assume that those who worked under him would carry out his instructions; and that is just what we find was done.

The letter directs that entries be made in the various books to show a sale of the farm to Shanti Prasad Jain at "book value". Also, that the entry be made in the books of R. Dalmia and J. Dalmia "as on 30-9-48", and in those of Shanti Prasad Jain "as on 31-10-48."

It is admitted that the book values of the shares of R. Dalmia and J. Dalmia were 1,50,000 and 1,35,000 respectively; and we find that those sums were duly entered in exact accordance with the directions contained in that letter.

The sum of 1,35,000 is entered at page 95 of J. Dalmia's journal under date 30-9-48 (entry JDB). There are corresponding entries of 1,35,000 (entry SPB) and 1,50,000 in Shanti Prasad Jain's journal under date 31-10-48.

It is important to note that though this letter speaks of a sale of the farm to Shanti Prasad Jain, it does not say that the sale took effect from May 31 and that the entries should accordingly be made as on May 31. On the contrary, the letter directs the entries to be made as on 30-9-48 and 31-10-48.

We now turn to the second paragraph of that letter. It directs that the profits be also entered in the books as on 30-9-48 and 31-10-48. The amounts of the profits were given in the latter, Ex. 363/p. 265 dated 25/26 February 1949 to which we have already referred and we find that the entries were made as directed. The 68,078-1-0 was entered at page 96 of J. Dalmia's journal under date 30-9-48 (entries JDC and JDD) and the 7,564-3-5 in Shanti Prasad Jain's journal under date 31-10-48.

We will now show that the entries of May 31 (JDA and SPA) were not in the books when the entries JDB, JDC, JDD and the corresponding entries in Shanti Prasad Jain's books were made.

We will turn again to page 104 of both ledgers. We have already shown that the entries JDA and SPA of May 31 could not have been made up to the point when the balance of 39,961-14-10 was transferred to D.C.P.M. as on September 30 in the one case and as on October 31 in the other.

The entries immediately after the 39,961-14-0 are the entries JDB and SPB of 1,35,000 in each of the books. They pertain to the transfer of the Lauriya farm to Shanti Prasad Jain. After that comes the entry of Rs. 68,078-1-0 (JDC) which debits the account of Shanti Prasad Jain for the Lauriya farm profit owing to J. Dalmia. These entries are also under dates September 30 in J. Dalmia's books and as on October 31 in Shanti Prasad Jain's books.

When the 39,961-14-0 was transferred to D.C.P.M. the balance at that point was nil as we have shown. The next two entries therefore left a balance of 2,03,078-1-6 as under :

1,35,000-0-0
68,078-1-0
<hr/>
2,03,078-1-0

In J. Dalmia's ledger this left at Dr balance in Shanti Prasad Jain's account, and in Shanti Prasad Jain's ledger a Cr balance to J. Dalmia. In J. Dalmia's ledger we find that the following was written in pencil in the balance column against the second of those two entries.

"Dr 2,03,078-1-0".

This has been rubbed out but, except the figure 2, the remaining figures are still discernible under a magnifying glass. The figure 2 is not very clearly discernible but it is evident that some figure was there.

Now this could not have been the balance at that point if the entry JDA of May 31 had been written in the book before these two entries. Therefore the sequence is clear. First came the two entries JDB and JDC written after March 1949 because of the letters of February and March 1949. (Exs. 363/p. 265 and Ex. J 60). At some unascertainable date after this the May 31 entries JDA and SPA were interpolated between the June 26 entry and the first entry of August 31 on the blank line that had been left between these two months.

We reach the same conclusion from R. Dalmia's a/c on page 102 of Shanti Prasad Jain's ledger. Here again the Lauriya farm entry of May 31 was interpolated on the blank line left between the two months. If we omit the figure of 1,50,000 (which is the sum R. Dalmia paid for the Lauriya farm) and total up the Dr and Cr columns up to the end of August 31, we get a Dr Balance of 2,92,805-11-8 as follows,

68,395-6-0	10,500-0-0
32,000-0-0	20,000-0-0
38,600-0-0	
10,000-0-0	
44,980-0-0	
61,330-5-8	
68,000-0-0	
<hr/>	
3,23,306-11-8	
30,500-0-0	
<hr/>	
2,92,805-11-8	

We find that this balance was transferred to D.C.P.M. It forms the last item at page 102. This could not have been balance at that point if the May 31 entry had been there. Therefore it is clear that the entry SPA of May 31 was inserted after August 31.

If we proceed with the balancing from that point, starting with a nil balance at the end of August 31 because of the transfer to D.C.P.M. and stopping just before the reversal entries we get the following :

1,891-12-8	14,467-14-0
4-13-3	
4-10-6	
12,571- 6-10	
<hr/>	
14,472-11-3	
14,467-14-0	
<hr/>	
4-13-3	

This debtor balance of Rs. 4-13-3 was entered in pencil against the last of these entries and was later rubbed out. It is clear that the book for the end of October 31 was balanced at this point and that the entry of SPA of May 31 had not been made up till then.

A little later this balance of Rs. 4-13-3 was also accounted for and the account was closed. The accountant member Mr. N. R. Mody drew Shanti Prasad Jain's attention to this in the witness box. He showed that the entry of 1,50,000 relating to the Lauriya farm was made *after R. Dalmia's account had been closed in Shanti Prasad Jain's books on October 31st 1948 and after receipt of the later 7/8 March 1949*. He showed that, like the other entry about the 1,35,000, this was also a subsequent ante-dated interpolation squeezed in under date May 31 long after this account had been balanced and closed as at the end of October 31.

We find more pencil entries and subsequent erasures at page 48 of J. Dalmia's ledger. There are only four entries there and they are as follows :

1947. Oct. 1 ..	To balance transferred from OLF	1,35,000	
1948. May 31 ..	By c/o shares sold to Seth S. P. Jain.	1,35,000	nil (in pencil and rubbed out).
1948. Sept. 30 ..	By c/o shares sold to Seth S. P. Jain.	1,35,000	nil (in pencil and rubbed out).
	To amount of entry of date reversed.	1,35,000	nil (in ink)

Now the "nil" against the third of these entries (JDB) does not make sense unless neither the May 31 entry nor the reversal entry was there when the September 30 entry was made; which again shows that the May entry JDA was made after the September entry JDB. If the May 31 entry was already there the word nil could not have been written with the May 31 entry staring the scribe in the face.

We will now examine the reversal entries. We have already seen that Laxmi Shankar Lal said that he made the entry JDB (voucher No. 48) in J. Dalmia's books on September 30 or soon after. He was then asked about the reversal entry JDE. He said,

"After book entry had been made on 30th September regarding voucher No. 48 it was detected that posting had already been made in the ledger regarding that transaction and therefore the entry was reversed."

He made this statement on 27-10-61 when he was examined as J. Dalmia's witness.

He was re-called on 23-1-62 (nearly 3 months later) as Shanti Prasad Jain's witness and gave the same explanation for the reversal entries in Shanti Prasad Jain's books; except that, this time, the reversal entries were made, according to him, on October 31 or soon after. When asked about the reversal entries he said,

"The entry at page 70 '(entry SPB)' was made in the month of May 1948. At the time of posting the entry at page 70 I discovered that it had already been made in May. Therefore I reversed the entry at page 73."

Now we have shown that this is false. If he was telling the truth it would mean that he made a mistake in the books touching a sum as large as 1,35,000 in one place and 1,50,000 in another; a total of 2,85,000. The mistake involved a large number of corrections, not only in the two journals but also at various places in the two ledgers namely at pages 102, 104, 94 and 48 in each. It also involved corrections and erasures of a whole series of pencilled balances. It is quite clear that he could not have done on his own authority, and it is equally clear that such a mistake would have shaken the accountant and Laxmi Shankar Lal to the core.

Now if the story is true, the mistake in J. Dalmia's books was discovered in September 1948 because Laxmi Shankar Lal says that the September entries in J. Dalmia's books were made within 2 days of September 30th. And yet he says that the accountant and he made exactly the same mistake when they were writing up Shanti Prasad Jain's books within a month of this colossal error in September or October 1948. Of course, the story is untrue, and if it was just a question of believing or disbelieving this witness the matter would be trivial. But the real question is, why did he tell these lies? And why did he persist in them after 3 months for reflection? A mere slip of memory is not the answer. It would be impossible for a man in his position to forget a mistake of this magnitude involving a series of corrections, alterations or pencilled balances and erasures of pencilled entries in three sets of books each consisting of a journal and a ledger and involving a series of vouchers. It must be remembered that these two men were also in charge of R. Dalmia's personal accounts at that time, so this whole process would have to be gone through in his books as well. The question still remains, why?

If Laxmi Shankar Lal's story is not true—and we have shown that it is false, then, at the very earliest the entries were made many months later, and that, as we have seen, was a departure from the normal practice of the office where the time lag between the date of the voucher and the making of the entry was never more than 2 to 4 days.

Now Shanti Prasad Jain was examined by the Commission about these entries and about the practice in his office and was asked whether he could throw any light on how and when the entries had been made. He said,

"It is a matter of importance for my partition..... I have made inquiry into this matter and I can say *on the basis of information that I had collected since etc.....* It is a matter of very serious importance to me. These entries relate to three persons, e.g., Pitaji, Chachaji, and myself. *These had been done with the concurrence of three persons.* This interpolation has not been for the purpose of some outsider or for some outside considerations. This thing has taken place between April 1948 up to some time March/April 1949."

Laxmi Shankar Lal was still employed in Rohtas Industries, one of the concerns controlled by Shanti Prasad Jain when he gave his evidence. It would be straining credulity to breaking point to say that Shanti Prasad Jain knew nothing about what Laxmi Shankar Lal had said on 27-10-61. But, if he did not know already he certainly knew about this colossal mistake in the account books that so vitally affected his case of partition when the witness spoke about it. It would require a very credulous person to believe that Shanti Prasad Jain did not make full enquiries from Laxmi Shankar

Lal and Rajkumar Lal Srivastava about what had happened; especially as Laxmi Shankar Lal was to come again as Shanti Prasad Jain's witness in order to depose about these very transactions. In spite of all that Laxmi Shankar Lal persisted in his story three months later. What conclusion is one to draw?

And what was Shanti Prasad Jain's attitude in the witness box? Not a straightforward story about the result of his inquiries, but a lot of beating about the bush and explanations about accounting practice and saying in one breath,

"It is not my case that these entries were made on 31st May. My case is *only that on that relevant period before 31st May it was decided that this should take place on 31st May.*"

And then speaking about probabilities, he said,

"Your remarks that these entries might have taken place afterwards, I do not dispute. They might have been entered at a point of time, probably at the same point of time as you say in Pitaji's and Chachaji's and Shanti Prasad Jain's books."

All of which was beside the point so far he was concerned. What we wanted from him was the information that he received from his own employees about matters that related to his own books and his knowledge about the entries. On that point he did not repudiate Laxmi Shankar Lal but said that *the result of his investigations* was that

"This thing has taken place between April 1948 up to some time March/April 1949,"

which, of course, covers what Laxmi Shankar Lal said, namely that the entries of May 31 were made on that date and the reversal entries in September or October, or soon thereafter. Therefore, it is clear that, according to him, his investigations did not reveal that the entries were made after March 1949. This showed that they might have been made any time after April 1948, that is to say, this might have been made on 31-5-48 as Laxmi Shankar Lal said they were. It is clear to us why Laxmi Shankar Lal persisted in his lies even after his re-call as Shanti Prasad Jain's witness three months later.

In our opinion the sequence of events was this,

1. No entries about the Lauriya farm were made till after despatch of the letter Ex. 363/P. 265 on 25/26 February 1949 and receipt of the letter Ex. J. 60 dated 7/8 March 1949;
2. This was because,
 - (a) No one at Dalmianagar knew anything about the sale of the farm till March 1949; and
 - (b) the advices about the profits of the farm for the farm year ending 30-6-48 were not received till February 1949;
3. After receipt of the advices and the letter of March 1949, the profits were distributed in the books in the normal course as on September 30 in J. Dalmia's books and as on October 31 in those of Shanti Prasad Jain.

These entries were made after March 1949 just as they would have been if there had not been any sale up to those dates.

These entries about the profits are the ones that we have called JDC and JDD in J. Dalmia's books.

There are corresponding entries in Shanti Prasad Jain's books.

4. At the same time, the entries JDB and SPB, about the sale, were entered as on September 30 and October 31 *exactly as directed in the letter of March 1949*. This was the first intimation about the sale of the farm that was received at Dalmianagar. No one there knew anything about the story of a sale on 31-5-48 at that time.
5. One some unknown date after March 1949 the decision to ante-date the sale to 31-5-48 was taken, and the scribe and the accountant were directed to manipulate the books so as to make it appear that the entries JDA and SPA had been made on May 31 or soon after; and to make it appear that the entries of September 30 and October 31 were mistakes that had to be corrected.

Shanti Prasad Jain laid great emphasis on the fact that these books had been produced before the Income Tax Officer and that they were initialled by him on 7-3-50. So, he says, these entries must have been there before the returns were submitted to the Income Tax Department.

But that means nothing, because, by reason of the reversal entries, the balances were not affected and the entries are so positioned that they could have been inserted at any time. Therefore, the mere fact that the Income Tax Officer saw the books on 7-3-50 and signed them on that date does not show that the May 31 entry and the reversal entries were there at that time. Also, we know that certain entries were made in the books of J. Dalmia as late as 1951 consequent on the orders of the Income Tax Investigation Commission. They were written by Bhutani (W 17) and some of them, e.g., at page 2 of J. Dalmia's ledger, were admittedly written in 1951 after the Income Tax Officer had signed that page on 7-3-50. If those entries could be made after 7-3-50, so could the ones that we are now considering.

In his arguments, Mr. Misra laid stress on the fact that the words "as on May 31" appear at page 104 of both ledgers, and he argued that that itself showed that the entries were made in good faith and that they were made at a subsequent date, that is, after 7/8 March 1949, and that though the entries were interpolations there was no intention to mislead or deceive.

But that also does not follow. The case that we have been asked to accept is that the decision to partition this property was taken in April 1948 and that the agreement was that the actual partition was to take effect as on May 31. In the ordinary way the entry would have been made either on May 31 itself or soon afterwards and the words "as on" could have been inserted to show that though the decision to partition was taken in April 1948, it was to take effect "as on May 31."

In our opinion, these account books are worthless quite apart from the fact that we have discovered manipulations in them. The value of account books lies in the fact that they are regularly kept, that manipulations and interpolations are not easy because of paging, periodical balancing and so forth.

The books that we have here are not of that kind. They are full of blank pages and blank spaces so that, as we have seen, subsequent interpolations were easy.

The paging of both journals has been done subsequently, and all at one time. The numbers are written in the same ink, and the fact that this was not done ahead of time is evident from the fact that the paging stops exactly where the last entries in the two books appear despite the fact that blank sheets follow the last entry. Also, the paging could not have proceeded simultaneously with the entries because in that event they would have been written in the same ink as the entries on that page or the page before or after it. The paging was therefore done after the two journals had been completed.

In the ledgers where Laxmi Shankar Lal said the balancing was done at the end of each month we find a series of pencilled balances erased from time to time as subsequent entries were added. In the few cases where the balances were transferred to other accounts so that the entries about the transfer had to be made in the body of the books, erasures were impossible and then the manipulations were at once exposed.

These books are not only worthless as evidence but they have been manipulated and false evidence has been led in support of the manipulations. Laxmi Shankar Lal who has nothing to gain out of the manipulated entries could not have come before us with such a carefully prepared story that fits in so exactly with the case as originally presented by Shanti Prasad Jain in his application dated 1-3-60 unless he had been tutored. He could not have thought of such an elaborate story on his own account.

These books are also of no value because, though meant to be the private books of the parties, they do not represent their total wealth. As far as J. Dalmia's books are concerned, the Income Tax Officer has said so clearly in his assessment order for 1953/54. Either one maintains books or one does not; and how can incomplete books be relied upon? For example, if a company were to maintain books recording some transactions and omitting the rest, what is the worth of such books?

Another point is that Shanti Prasad Jain has at least two sets of books. Shriyans Prasad Jain said in examination-in-chief that,

"there were two accounts-books assets and undisclosed assets."

He was therefore questioned about this by the Commission and said,

"As I was trying to explain to you there were three kinds of shares. Shares that were held by individuals, shares held by companies and shares that were not disclosed."

He was asked,

"What exactly do you mean by 'not disclosed'? He replied,

"Shares that were not in the books, either in the individual books or in the books of the companies."

The matter was pursued by the Commission when Shanti Prasad Jain entered the witness box. It was found from his books that he had borrowed very heavily from certain banks and that he had advanced the moneys so

borrowed to two of the scheduled companies, D.C.P.M. and Allenberry. He was told,

"According to your books you have no assets because your assets are matched by your liabilities. You can see that what has happened here is that though you have got investments in the year 1947/48, correspondingly your liabilities have increased terribly. Your capital is fractional compared to your total assets."

That was the background of the questioning. He was shown his books and was asked,

"That was the extent of your capital as recorded in the books?"

He said,

"Yes sir, *as recorded in the books.*"

So, he was asked.

"That is to say the books are not complete so far as your other assets are concerned?"

He said,

"Yes, sir."

Then he was asked.

"You are supposed to have acquired 6065 shares of a particular company under the partition. You had no shares of your own. *It is not mentioned in the ledger.*"

He said,

"*Might be in some other ledger.*"

So he was asked,

"Did you have two sets of books?"

He said,

"My wife's books and children's books were also there."

According to the Balance Sheet of Shanti Prasad Jain as on 31st October, 1948, the following position emerges:—

Investments	34,34,245
Lauriya Farm	3,00,000
Book Debts—	
Current Accounts	77,08,074
Others	100
	<hr/>
	77,08,174
Outstanding income	73,061
Income-tax receivable	31
Advance payment of tax	1,18,272
Cash and Bank Balances	4,120
	<hr/>
TOTAL ASSETS	1,16,37,903
Less : Liabilities	
Loans from Bank	34,03,732
On current Account	81,79,461
Other liabilities	16,527
	<hr/>
	1,15,99,720
Net Assets Rs. representing capital.	38,183

1. This statement shows that some transfers of shares took place in 1948, but not sufficient to give voting control. This is amply borne out in this Balance Sheet because the total investments are only Rs. 34,34,245.

2. It will be observed that the bulk of the money has been lent out on what is called "Current Account"—Rs. 77,08,074 mainly to Dalmia Jain & Co. Ltd. (Rs. 61,40,840) and Rashtriya Investors Ltd. (Rs. 10,00,000).

3. Loans from Banks amounting to Rs. 34,03,732 were as follows :—

	Rs.
Allahabad Bank Ltd., Calcutta	32,53,732
Union Bank Ltd., Bombay	1,50,000
	<hr/> 34,03,732

4. The liabilities on Current Account—Rs. 81,79,461 are due to—

Ashoka Marketing Ltd., Dalmianagar	71,24,754
Ashoka Marketing Ltd., Calcutta	10,54,707
	<hr/> 87,79,461

5. To sum up the above, the investments of Rs. 34,34,245 and Book debts on Current Accounts Rs. 77,08,074 aggregating Rs. 1,11,42,319 are more than matched by the loans from Banks—Rs. 34,03,732 and liabilities on Current Accounts—Rs. 81,79,461 totalling Rs. 1,15,83,193; and the Balance Sheet discloses the ridiculous position that the capital of Shanti Prasad Jain as on 31st-October, 1948, as recorded in his private books shown to us, is only Rs. 38,183. This distinctly proves that the said books are incomplete and cannot be relied upon.

The various transfers of shares that we were shown are fractional compared to the numbers that would be necessary to give them control of the various companies : and the explanation given was that the ones shown to us do not represent the total holdings because the bulk of the shares are held in blank transfer. But we were not given any idea of how large they were, nor who held them, nor whether they were also transferred and when. The picture that Shanti Prasad Jain chose to disclose to us is therefore on the face of it very incomplete, and this evidence is wholly insufficient to establish that there was a final and complete disruption of this vast industrial empire worth crores and crores of rupees by showing us a little incident here and a little incident there which do not necessarily lead to an inference of a complete partition; and deliberately hiding the bulk of the facts and withholding the most important items of evidence and cooking up entries in accounts books and giving false evidence about them.

CHAPTER IX

WERE THE INTERPOLATIONS INNOCENT ?

Having determined the order in which the Lauriya Farm entries were made and having reached the conclusion that the earliest entry in the account books about this was scribed in or after March 1949, we will now ascertain why the first set of entries were made under date September 30 and October 31, 1948 and not May 31, and will determine whether that was due to a mistake.

Shanti Prasad Jain said that,

"The only mistake that has been made is that he has made the entries as on September 30 in Mr. J. Dalmia's books and as on October 31 in Shanti Prasad Jain's books which he has reversed *on the same date* and that he has corrected these entries. Either they were in existence at that point of time as on May 31, 1948 or he has made those entries as they ought to have been made as on May 31."

His case is, therefore, the same as the one made out by Laxmi Shankar Lal in his evidence, namely, that the entries JDB and SPB of September 30 and October 31 respectively were mistakes which were rectified *the same day*. What we have to see is whether that can hold water.

The first point to notice is that the decision to make these entries did not emanate at the accountant level; Rajkumar Lal Shrivastava merely carried out the instructions of H. D. Bishnoi.

Shanti Prasad Jain cleared this up by saying,

"So far as the accountant is concerned, he does not make them. He receives instructions from H. D. Bishnoi. He is absolved from all responsibility when he receives instructions."

That carries us back to the Bishnoi-Shital Prasad level.

Shanti Prasad Jain's explanation is that there was disagreement between H. D. Bishnoi and Shital Prasad Jain who were jealous of each other and were not pulling on well. He says that Shital Prasad Jain directed that the entries should be as on May 31, 1948 but Bishnoi did not want to carry out these instructions, so he perversely directed the accountant to enter them as of September 30 and October 31. He said,

"It appears that H. D. Bishnoi did not want to carry out the instructions of Shital Prasad Jain. He says that I have advised that these entries be passed on September and October 1948. Naturally. Shital Prasad appears to have insisted that these transactions have taken place as on 31st May, 1948 and the profit of June should also go to the account of S. P. Jain. The decision was that the entry should be in the books of S. P. Jain and not in the books of the partners. H. D. Bishnoi was the top man but Shital Prasad had much larger authority in this matter."

What we have to consider is whether this sort of tussle between H. D. Bishnoi and Shital Prasad Jain was probable.

Reverting the story about the decision taken in April 1948 to separate as from May, 31, Shanti Prasad Jain told us that,

"R. Dalmia deputed Shital Prasad to work out, slightly in more details, what will be its implication and how this will be implemented."

Shital Prasad was also the person who scribed the list of companies, Ex. S 575, and, according to Shanti Prasad Jain Shital Prasad was the one who insisted on Shanti Prasad Jain signing the list; and Shanti Prasad told us that that is the only reason why he signed. He said,

"He must have put that note and said 'please sign it' and we signed. We cannot refuse him."

Shanti Prasad Jain was asked,

"What was the significance of 31st May, 1948?"

He replied,

"Because we came to a decision about 20th April, finalised the whole thing by 20th April and we had about a month."

He was asked,

"Did you regard it as an important decision?"

And he answered,

"31st May be regarded as an important thing."

Then he was asked,

"Was the decision to separate on 31st May reached before the 31st May, 1948?"

He replied,

"As I said, some time by 20th of April."

In examination-in-chief Mr. Misra asked Shanti Prasad Jain to tell us which of the important employees were told about the partition. Shanti Prasad answered,

"This was another decision. After the decision was taken that the person concerned will inform to the chief executive or to his own organisation, immediately of the decision of the partition of the D. J. group. As a result of that the chief executive so far as my companies were concerned I informed him."

In cross-examination he was asked,

"Did you issue a memo. to Shital Prasad that the distribution has to be effected as from 31-5-1948?"

He answered,

"He was told sir. By 20th April. by three of us."

Therefore it is clear that, according to Shanti Prasad Jain, Shital Prasad received definite instructions about 31-5-1948 in April 1948 and that he knew all about the importance that was attached to this date.

Now, as we have seen, Shital Prasad was not only the Chief executive but he played the most important part in advising about the mechanics of the dissolution. So he knew all about the details in both capacities. Shanti Prasad also said that Shital Prasad told Bishnoi to make the entries as on May 31 but Bishnoi refused to do so because he did not pull on well with Shital Prasad and resented his interference. Therefore, according to Shanti Prasad Jain, H. D. Bishnoi also knew.

Shanti Prasad Jain said,

"To give effect to this decision that was arrived at the time of the marriage *the working of the same was entrusted to Shital Prasad Jain*. He was at that time working at Dalmianagar for working out *the whole details*."

We now turn to the position of H. D. Bishnoi.

Shanti Prasad told us that,

"H. D. Bishnoi, who was No. 1 executive at Dalmianagar was appointed to look after the responsibilities of caretaker."

If he was made responsible and was made the caretaker, it is obvious that Shanti Prasad Jain must have informed him also about this matter in April; and as he was to bear the brunt of the responsibilities and assume the duties of caretaker it is obvious that he must have been supplied with all the details; in any case, he was told about the date 31-5-1948.

Now what were those details so far as the Lauriya Farm was concerned? Shanti Prasad Jain is quite definite that the decision about this was reached in April 1948; and he said,

"The decision was that the entry should be *as on 31st May 1948* and the profit of the June should be *in the books of S. P. Jain* and not the books of the partners."

It is, therefore, clear that Shital Prasad Jain and H. D. Bishnoi would both have known about this decision in April 1948.

The next point is that if they knew that so much importance was attached to the date 31-5-1948, would they not have told the accountant Rajkumar Lal Shrivastava *before May 31, 1948* to record the transactions *on May 31*. We find it difficult to believe that both slipped up on a matter like this; and still more difficult to believe that Bishnoi would have gone against the instructions of Shanti Prasad Jain just because he did not like Shital Prasad. It must be remembered (if Shanti Prasad Jain's story is true), that the decision about May 31, was that of Shanti Prasad and that it was conveyed to Bishnoi by Shanti Prasad himself; it was not a decision of Shital Prasad.

But let us assume that they both slipped up on this matter, or that there was this difference of opinion between them. The trial balances of the personal accounts and the Profit and Loss account, were sent to Shital Prasad Jain before 26th February 1949 and those balances did not show this transfer (*See Ex. 363/265*). It is understandable that the profit could not have been included because they were not then known; but that does not apply to the sale. That ought to have been entered. Surely Shital Prasad Jain would have taken steps about the omission then.

But, even if he slipped up again at that stage, when the matter was directly brought to his attention in February 1949 surely that at least would have rung a bell in his memory.

Now Shanti Prasad Jain says that Bishnoi disregarded the instructions given to him out of pique because of his jealousy of Shital Prasad. But, as we have said, this was not a decision reached at the Bishnoi-Shital Prasad level. The instructions were given by Shanti Prasad Jain himself *in person* in April 1948. Is it conceivable that Bishnoi would have deliberately flouted Shanti Prasad Jain's authority and instructions simply because he did not like Shital Prasad? We make it clear that that is the case that Shanti Prasad Jain put forward. His explanation, given to us *after he had made enquiries* was.

"It appears that H. D. Bishnoi did not want to carry out the instructions of Shital Prasad Jain. He did something which he ought not have done and he was forced to reverse this state of affairs."

But even if Shanti Prasad Jain had not told them specifically about the Lauriya Farm, he certainly told them to effect as "complete" and "final" a severance as was possible *by the 31st May 1948*. If, therefore, Shital Prasad Jain was insisting that the directions that he was giving Bishnoi about the Lauriya Farm were those of Shanti Prasad Jain, then, in the event of a difference of opinion between Bishnoi and Shital Prasad Jain, would not *both* of them have gone at once to the fountain head to ask for clarification? We have seen how careful Shital Prasad Jain was over the list Ex. S. 75. This is evident from the fact that he made them all sign the list, though, as Shanti Prasad Jain admits, the signature of R. Dalmia, which was already there, (they did not all sign at the same place), would have been more than enough. Is it conceivable that Shital Prasad would go on quarrelling with Bishnoi and let Bishnoi issue the instructions that he did in the letter of March 1949, if those were the facts?

But even if Bishnoi was still obdurate would not Shital Prasad have brought this to the notice of Shanti Prasad Jain immediately? How is it that Shanti Prasad Jain knew nothing about this matter even when we questioned him in 1962. He was only able to give us a roundabout explanation of what *might* have happened and what he *inferred* had happened after making "careful inquiries". He did not say that they came to him and sought clarification at his hands, or that Shital Prasad came to him at the time and told him that Bishnoi refused to carry out Shanti Prasad's instructions.

The only reasonable inference to draw from these facts is that neither Shital Prasad Jain nor H. D. Bishnoi knew anything about this story of a partition as on the 31st of May; nor did they know that the decision was to credit the whole of the Lauriya farm profits to Shanti Prasad Jain for the farm year ending June 30, 1948.

And that brings us to the next point. How is that the Lauriya farm people knew nothing at all about this and told Rajkumar Shrivastava in February 1949 to distribute the profits just as if nothing had happened?

J. P. Saxena (W. 23) was the Secretary of the Lauriya farm at the relevant time. He said that the farm was transferred to Shanti Prasad Jain exclusively either in April or May and that instructions to that effect were

sent to him a few days before the marriage of J. Dalmia's daughter, that is, he received the instructions in April 1948. He said,

"Just a few days before the marriage of the daughter of J. Dalmia, *Shanti Prasad Jain* telephoned to me in respect of sending the reports, which were sent to me to Delhi. . . . He told me that the entire ownership of the farms had been transferred to him I should consult him only. These instructions were in reply to my written note to R. Dalmia's Secretary at Delhi."

If this is true, how is that there was a slip up even at the Lauriya farm and that no instructions were sent either to H. D. Bishnoi, or to Shital Prasad Jain, or to the accountant Rajkumar Lal Shrivastava? How is it that the advices that Rajkumar Lal Shrivastava received from the Lauriya farm in February 1949 said not a word about the transfer, still less that it had taken place on 31-5-1948? (See Ex. 363/p. 265 which we have reproduced earlier). Surely all these different employees could not have slipped up on an important matter like this involving Rs. 2,80,000 worth of property as well as several thousands of rupees in the shape of profits; especially after Shanti Prasad Jain had gone to such great pains to issue explicit instructions to them all even to the extent of ringing them up on the telephone to emphasise the urgency of the matter. We are clear that Sakseena's evidence is also false. We are clear that neither the Lauriya farm, nor H. D. Bishnoi, nor Shital Prasad Jain knew anything about the transfer till after February 1949 when the advices dated 30-9-1948 about the profit of the Lauriya farm for the year ended 30-6-1948 were sent to the accountant. And when they came to know about the transfer between 26-2-1949 and the 7/8th March 1949, they did not know anything about the date 31-5-1948. That was a much later afterthought.

It is evident from the letter of March 1949 that some time between February 1949 and March 1949 they decided that the Lauriya farm should be transferred to Shanti Prasad Jain; but we are of opinion that the decision to ante-date the transaction to 31-5-1948 and make it appear as if the transfer had taken place on May 31, was reached after March 1949. That is why the entries JDB and JDC and JDD in J. Dalmia's books and the entries SPB and SPC in Shanti Prasad Jain's were entered first. Those entries were not mistakes. They were the direct outcome of the letter of March 1949 and were obviously made because Bishnoi was told to instruct the accountant to make them in that way and to distribute the profits in the way mentioned in the letter. We are not able to believe Shanti Prasad Jain's story.

We have examined the story about the Lauriya farm at length because it is the most vital part of the case about partition. It is the one place where we can lay our hands on something tangible and concrete and examine it. All the rest of the story is fluffy and intangible and is hidden behind veil after veil of ingenious hypothesis and conjecture and suggestion. This is the one place where it has been possible to tear all these curtains of conjecture aside and get at the truth.

Also, even as the Lauriya farm is the most vital part of the evidence to prove this part of the story of partition, so are the account books the most vital part of the evidence to prove that fact. This was the one place where there should have been no difficulty in giving clean, simple and straightforward evidence if the case was true. It has collapsed because the most vital part of the evidence, the account books, has been manipulated

and false evidence has been brought to bolster up the manipulations. If that is the state of affairs in the most vital part of the story how can anything else be trusted?

As regards the shares. All the transfers of shares on which reliance is placed are after 31-5-1948, except one. They do not, therefore, in themselves relate back to 31-5-1948. The one transfer that is said to have been made on that date relates to the transfer of certain Allenberry shares. But this entry is another clear interpolation and was made at a later date. Like the entry about the Lauriya farm, this entry is squeezed in on the blank line that was normally left between the end of one month and the beginning of another. The entry is at page 102 of J. Dalmia's ledger. The year "1948" is written above the "May 31" and is repeated after it.

The only other place in the book where this has happened is in the case of the Lauriya farm which we have examined at length. It seems quite evident to us that the entries for the year 1957 finished before the May 31 entry. A blank line was left as usual and the next set of entries followed. As the year had changed by then, the year "1948" was written immediately before the blank line. It was after this that the May 31 entry was made.

Unless the year "1948" had been inserted above the date May 31, it would have followed the last of the 1947 entries. Therefore, the scribe had to write "1948" just above the "May 31". That explains why the year "1948" is written immediately above and again below the "May 31"; and as this happened in another place, and as it was repeated in Shanti Prasad Jain's ledger, the repetition could not have been accidental. For all these reasons we are not able to place reliance on the transfers as proof of a partition on 31-5-1948.

CHAPTER X

IMPLEMENTATION OF EX. 1216

We have said that there is evidence to indicate that Ex. 1216 was implemented. One of these indications is to be found in the evidence of K. N. Bajaj (W. 21). He is an old friend of the family and is related by marriage to V. H. Dalmia. He was asked,

"You having been well acquainted with the family, did you know whether they had any particular shares in these business before 1948?"

He replied,

"Sometimes it used to be that talks on certain shares at different times were mentioned. Whether they were equitably distributed in that manner I have never verified."

Q. "What were those shares?"

A. "Certain percentage was being talked of for charities and R. Dalmia had some percentage and the other two."

Bajaj was talking here about their share in the *businesses* and not about their share in the tax liabilities; and he was talking of what was said at the time the partition talks were taking place in April or May 1948. This is in keeping with Ex. 1216.

Further confirmation comes from a documentary source. Ex. J. 24 is an order of the Income Tax Officer who made the income tax assessment of J. Dalmia for the accounting year ending 30-9-1952. The body of the order shows that the Income Tax Investigation Commission computed the concealed assets of the Dalmia Jain group in the shape of concealed shares in limited companies to be Rs. 4,19,72,668. J. Dalmia told the Income Tax Officer that because of a partition between the three in "early 1948" the value of the shares that fell to his share was Rs. 1,32,41,454. He gave the Income Tax Officer a list of these shares. It was admitted before the Income Tax Investigation Commission and also admitted by J. Dalmia before the Income Tax Officer that the concealed assets of the Rs. 4,19,72,668 were joint property until they were divided in 1948: (Ex. J. 24). We do not know how much of the total liability was assigned to the share of Shanti Prasad Jain and how much to that of R. Dalmia because Shanti Prasad Jain refused to divulge these facts saying that they related to his personal affairs.

Shanti Prasad Jain was warned that it had a bearing on his story of partition and that if he refused to assist us in the matter we would draw unfavourable inferences against him. No question of privilege arose because *he* raised the issue of partition and *he* said that the group had no joint property or assets except the Lauriya Farm. Ex. J. 24 and Ex. 1216, which all three of them signed, indicate the contrary. Therefore, in the absence of assistance from Shanti Prasad Jain, we are justified in holding against him on the strength of the evidence that we have quoted that what

he told us is not true and that the group did possess joint assets other than the Lauriya Farm and that the shares that they held in the various companies were joint property.

Mr. Misra said that no such inferences could be drawn because the Income Tax Investigation Commission was free to make the three of them jointly responsible arbitrarily; and that in any event, this was the settlement of a dispute and so no inference could be drawn about anything done there.

We do not agree. The Income Tax Investigation Commission was not free to act arbitrarily and it could not arbitrarily foist a joint liability upon persons when none existed in fact. But quite apart from that, Shriyans Prasad Jain (W. 47) told us that even in April 1948 they had agreed to settle the liability in the proportion of 50 : 25 : 25.

Q. At the time of partition was any arrangement made among the members regarding the tax liability?

A. 50 per cent of the liability would be borne by Shri R. Dalmia; 25 per cent would be borne by Shanti Prasad Jain and 25 per cent would be J. Dalmia.

Q. Was it because these undisclosed assets were also agreed to be divided in the same proportion?

A. Yes.

He is corroborated by K. N. Bajaj who also said that certain percentages were agreed to though he could not remember what.

This direct evidence is corroborated by the conduct of the group before the Income Tax Investigation Commission. There was no need for them to make a voluntary disclosure of joint liability if there was none. If the present case is true that each held his shares separately and individually, nothing could have been easier than to say so at the time and give the lists that were given to the Income Tax Officer from the start instead of admitting joint liability, as they agreed to do in April 1948, and then supplying the Income Tax Officer with separate lists in the second revised return that was filed by J. Dalmia as late as 10-3-1958.

The strongest evidence about the implementation of Ex. 1216 comes from Ex. J. 7 which was signed by all three of them on 21-9-1952. This was not a loose document as Ex. 1216 and Ex. S. 75 are said to be. It was carefully drawn up by lawyers after close attention and thought. It showed that the three signatories accepted joint liability in respect of Rs. 96,52,479 which was then outstanding under the Income Tax Investigation Commission's order; also that they agreed to divide that liability between themselves as follows: Rs. 48,34,274, R. Dalmia; Rs. 24,00,002, J. Dalmia; Rs. 24,18,203, Shanti Prasad Jain. The proportions are very nearly 50 : 25 : 25.

The slight differences in the proportions are explained by the fact that the liability imposed by the Income Tax Investigation Commission was Rs. 1,08,72,812, the figure given in an earlier recital. Part of that was paid and what remained was Rs. 96,52,479. We do not know what repayments each made but that is enough to explain the apparent discrepancies in the 50 : 25 : 25 proportions.

Clauses III of Ex. J. 7 states that,

"The Joint Stock Companies shares charged *with the Income Tax Department as security*... belong to the parties hereto as appearing *now* in their respective books of account."

This shows that certain shares were charged as security for the joint income tax liability and that they were not parcelled out between the three till the date of the document.

Clause IV provides that R. Dalmia should deposit certain shares in Dalmia Dadri Cement and in Jaipur Udyog Limited with J. Dalmia in trust, "*as further security* for due payment by the first party (R. Dalmia) of his share in the tax liability."

It is, therefore, clear that the settlement reached on 15-7-1946 in Ex. 1216 was adhered to and implemented not only in the partition talks of April 1948 but again in Ex. J. 7 as late as 21-9-1952.

Ex. J. 7 is, of course, dealing with the income tax liability for the financial year ending 1946/47 and so is not reciting a post-partition position. But it is reciting in the year 1952 that their shares in the Income Tax liabilities for the year 1947 were the same as those set out in Ex. 1216 and so is evidence to show that even as late as 1952 the parties to Ex. J. 7 accepted the division of interest set out in Ex. 1216 and to that extent implemented Ex. 1216 up to the end of their accounting year 1947.

Another witness that bears out the fact of implementation is Mohali Ram Sonthalia (W. 37). He is a member of the Calcutta Stock Exchange. He was asked whether he attended the marriage of J. Dalmia's daughter, Uma, in April and May 1948 and he was asked where he stayed during that period. In answer to this question he volunteered the following. He said,

"I had some talk with R. Dalmia about family matters. He told me that differences had arisen in his family and they were not happy over these differences. He told me further that Shanti Prasad Jain and J. Dalmia were not pleased with him on account of his (R. Dalmia's) marriages. He told me that he wanted to give a share in the business to the issues born of second and third wives. *Shanti Prasad Jain and J. Dalmia had refused point blank to give a share in the business to his children.*

This refusal was in keeping with the agreement reached and recorded in Ex. 1216.

Apart from the fact of implementation, Ex. J. 7 bears out our interpretation of Ex. 1216 and shows that the three of them had joint assets over and above the Lauriya farm and that the shares held by them in joint stock companies were joint property and not individual property. This is apparent from the following recitals,

"Whereas the first party (R. Dalmia) commenced and carried on business at various places and was responsible for the incorporation of various Joint Stock Companies and later on for the acquisition of management otherwise of several companies, and

whereas the first party hereto out of love and affection for the second and third parties (J. Dalmia and Shanti Prasad Jain) associated

them with the management of the said companies which continued to be carried on under the guidance of the first party."

These recitals indicate that the acquisition of the companies was financed by R. Dalmia and that the others were only associated with the *management*. There is no reference to the capital subscribed by the others; nor is there anything to indicate that they had anything to do with the acquisitions.

It seems that originally the whole property was paid for and acquired by R. Dalmia, and that the others had no share in it. But the position was altered in 1946 and R. Dalmia gave them defined shares in the income, and apparently in the capital as well because Ex. 1216 says that the *capital* is being "re-partitioned". They had probably been given some share in the capital and income a little earlier also because Ex. 1216 says that the capital is being "re-partitioned". Anyway there is no getting away from the terms of Ex. 1216.

This is also borne out by R. Dalmia himself. In one of his many applications to the Commission—this one is dated 22-4-1960, he said,

"the petitioner, his brother Shri Jai Dayal Dalmia and his son-in-law Shanti Prasad Jain, had partitioned *all* their properties including the shares in the companies mentioned in the schedule, in 1948."

The next two recitals in Ex. J. 7 are as follows,

"Whereas the parties hereto terminated the said arrangement by mutual consent between themselves as from the month of June, 1948 and divided the assets between themselves and the parties hereto have since been in complete and exclusive possession and/or control thereof respectively, and

whereas there is no other liability *now* to be discharged jointly.... except the liability of Income tax...."

Whatever the truth of the recital about the termination of the arrangement by mutual consent there is a clear admission that there were joint assets other than the Lauriya farm, at any rate up to June 1948; also that there were joint liabilities other than income-tax. If the Lauriya farm was the only joint property then the statement that

"The parties have since been in complete and exclusive possession."

does not make sense, because the Lauriya farm went to the exclusive possession of Shanti Prasad Jain, so there was nothing else for the others to possess after that.

The reason that Shanti Prasad Jain gave for the execution of Ex. J. 7 was that it was necessary to divide the undermined tax liability in certain proportions, and as this liability was to be spread over a long period, possibly 7 years, it was thought desirable to have this reduced to writing. Also for another reason,

"Also, it was desirable for future generations, heirs etc. so that there may not be any difficulty between heirs of three persons to declare that each of them, the said R. Dalmia, J. Dalmia and Shanti Prasad Jain release each other of them from all actions, accounts, claims and demands of any nature whatsoever."

If the object was to prevent the heirs from demanding an accounting it seems a curious way to go about it and start by indicating that there was joint property in respect of which an accounting could be asked for. If in fact there was no joint property except the Lauriya farm, no question of any accounting could arise and the simpler course would have been to set out the truth and say that there was no joint property in respect of which an accounting could be demanded and then to add that even if there was, the parties released each other etc.

We do not believe this specious explanation.

Mr. Misra gave us an even more ingenious explanation when he tried to explain away a fact that no lawyer could run away from namely, that you cannot divide a thing unless it is held jointly; and that as Ex. J. 7 says that the assets were being divided it could only mean that those assets were held jointly till divided. He said,

Suppose a company which we will call A, holds shares of another company X. Then those shares form the assets of company A and they are the property of the shareholders of company A.

Next suppose that three persons L, M and N own shares in company A in their individual and exclusive rights. Those shares would not be their joint property. But as L, M and N are shareholders in company A, they are joint owners of the assets of company A, that is, they are joint owners of A's shares in company X.

The explanation is ingenious, but no one had suggested that the subject matter of the partition between the three members of the group related to the shares represented by company X. It was emphasised over and over again that all that was divided was the *control* over the group of companies represented by company A. Shareholder L was only one among a group of other shareholders in Company A and no one suggested that the idea was to divide the shares of company X between shareholder L and his fellow shareholders in Company A. We prefer the more natural interpretation that we have placed on these documents to the far-fetched interpretation of Mr. Misra and the laboured explanations of Shanti Prasad Jain.

We note that R. Dalmia stated in his affidavit in the Bombay High Court that the Group was still in existence in 1950 and 1952 and that it was still functioning as a group even as late as that. He said,

"I say that shares of more than 95 per cent of the paid-up capital of the S.S.B. Mills and M.D.M. Co. were held by the said group."

and,

"It is difficult to understand what is wrong if a company having acquired 95 per cent of the shares of the said companies this group appointed its Managing Agents."

The Managing Agents were not appointed till July 1950. Lastly, speaking of the awards made in those case he says,

"No question of any loss having been suffered by the investing public could possibly arise in the cases where shares of the face value of more than 95 per cent were with the said group."

The awards were made in 1952, so according to R. Dalmia the group was still in existence and functioning as a group down to 1952.



CHAPTER XI

ORAL EVIDENCE : "OUTSIDE" WITNESSES

We will now turn to the oral evidence. Mr. Misra divided the witnesses into groups. First he listed the witnesses who had heard of the dissolution. He subdivided these into what might be called outside witnesses, that is to say, persons who were not employees in one or other of the many Dalmia Jain group concerns and those who were concerned with implementing the partition in the various companies. In the first sub-group one lot speaks of certain incidents in connection with some labour trouble in Rohtas Industries at Dalmianagar.

All that this evidence amounts to is that Shanti Prasad Jain handled this situation and that R. Dalmia washed his hands of it. In our opinion this does not mean much because it is admitted by Shanti Prasad Jain, and is also proved by a number of witnesses, that Shanti Prasad Jain was in charge of the industries at Dalmianagar and particularly the Rohtas Industries; and that he had been in day to day management of them from 1938/39 to at least 1950.

The only witnesses of any consequence in connection with the incidents that arose out of the labour dispute are J. P. Narayan (W. 46) and Basawan Singh (W. 26). The significant thing in their evidence is that neither said that Shanti Prasad Jain took charge of this dispute because of a partition in the family; and equally significant is the fact that both went to R. Dalmia and asked him to handle the situation, and indeed, expected him to do so in December 1948 or January, 1949.

The initial negotiations about this were with Shanti Prasad Jain. He had accorded recognition to a local labour union which was a rival to that of Basawan Singh. This annoyed Basawan Singh and he discussed the matter with Shanti Prasad Jain. This was natural because Shanti Prasad Jain was then managing the affairs of Rohtas. When Basawan Singh found that he could not get what he wanted out of Shanti Prasad Jain both he and J. P. Narayan went to R. Dalmia and what they were told there *with Shanti Prasad Jain present* does not bear out the story that we have been told about partition.

J. P. Narayan (W. 46) told us that Shanti Prasad Jain was the spokesman on behalf of the management of Rohtas Industries at Dalmianagar in these disputes. Mr. Misra then asked him,

"Have you any occasion of having any talk in this connection with Shri R. Dalmia?"

He replied,

"Yes. I and Mr. Basawan Singh came together to New Delhi to meet Mr. Dalmia and talked to him about the settlement of this dispute. . . . Must have been in December 1948 or may be early 1949."

Mr. Misra then asked him,

"Can you recollect what Shri R. Dalmia said?"

The witness answered,

"I think he did plead helplessness in the matter. *Mr. Shanti Prasad Jain was also present* when we had a talk with him and he said that you talk to him (Shanti Prasad Jain). In any case, my recollection is that Mr. Dalmia was not helpful and we had to deal with Mr. Jain. He said that he (that is, Mr. Shanti Prasad Jain) was *looking after it* or he was *in charge of it* hence I should talk to him."

It is a curious fact that even after the preliminary talks with Shanti Prasad Jain these two gentlemen were not told that R. Dalmia had no concern with this matter as Rohtas Industries now belonged to Shanti Prasad Jain and so R. Dalmia was nobody so far as that industry was concerned. It is even more significant that even when they all met face to face in Delhi they were not told that R. Dalmia was out of the picture altogether because of the partition. Instead, the only impression that they got was that Dalmia was "not helpful", and that Shanti Prasad Jain was "in charge" and "looking after" Rohtas Industries. But he had been doing that all along and this is exactly what would have happened if R. Dalmia did not want to interfere because of the political overtones in the dispute.

The only other matter of consequence in the evidence of J. P. Narayan is the following. Mr. Misra asked him the following specific question,

"Was there any talk about Dalmianagar Industries having been given to, or belonging to, S. P. Jain?"

The witness answered,

"*There was not a talk exactly*, but in all the steps that I took in the matter, *i.e.*, writing to the Chief Minister of Bihar, writing even to Panditji, *i.e.*, the Prime Minister, and to all others concerned it was only Mr. Shanti Prasad Jain who figured and the *impression* that one had during that time was, and I think it was even in the public that the property did belong to Mr. Dalmia and that he had given it to his son-in-law and that he was all in all. He was the person who had to be dealt with."

This is only an impression of the witness about a matter that we have to decide and so is not worth much as evidence; but so far as it goes, it is not consistent with Shanti Prasad Jain's story. Apart from all else it envisages a situation in which this property belonged to R. Dalmia and in which he made a gift of it to his son-in-law; and not that he partitioned it either in the way that Shanti Prasad Jain describes or in any other way. So far as the personal knowledge of the witness goes we have it that he was not told outright that there had been a separation in the family and that R. Dalmia had no more concern with Rohtas. That would have been the obvious and natural thing to tell him if there was any truth in the present story.

For these reasons we attach no importance to the evidence that arises out of the incident about the labour dispute in Dalmianagar.

We also attach no importance to the following three "outside witnesses". Two of them had an interview with Shanti Prasad Jain shortly before they gave evidence before us. We think their "memories" were coloured by those recent contacts with Shanti Prasad Jain just before they entered the witness box. The third was actually living with him when he gave his evidence. This is what they told us.

Sohan Lal Jajodia (W. 29) said,

"I have not received any summons from the Commission. I came to Delhi this morning for my own business. I went to see Shanti Prasad Jain yesterday morning. He asked me whether he could cite me as a witness and that my evidence was required on the question of the Dalmia Jain Group."

C. L. Bajoria (W. 42) said that his knowledge was based on what he had heard from "the market and the bazar" and that he fixed the date because "just to refresh my memory I asked Shanti Prasad Jain in the morning before I came here."

Ram Lal Aggarwal (W. 43) was asked how he was able to fix a certain date about which he had deposed, and he said,

"I received a telephone call from Shanti Prasad Jain asking me to come to Delhi. He told me on the telephone that I would have to depose about my business dealings with Allenberry, therefore, I consulted my books."

Then he was asked,

"Did Shanti Prasad Jain remind you also of the conversation about which you have deposed."

He answered,

"I am now staying with Shanti Prasad Jain. Shanti Prasad Jain told me I had very large dealings with Allenberry and I will be asked to depose about the matter."

One more passage is relevant.

Q. "According to you and the information given to you by Shanti Prasad Jain, he had nothing to do with the affairs of Allenberry at the time he talked to you. How did Shanti Prasad Jain know that you had large dealings with Allenberry?"

A. "In Calcutta everyone knows that I purchase motor vehicles and spare parts. That is the reason why Shanti Prasad Jain must have known about my purchases from Allenberry."

Q. "As a dealer in motor vehicles you are perhaps aware that many other people must have been buying from Allenberry?"

A. "There are a lot of other dealers with Allenberry."

That leaves B. P. Khaitan (W. 20) and Sonthalia (W. 37).

Khaitan is a Calcutta Solicitor who acted as a solicitor to Rohtas Industries. He told us that shortly after the middle of 1948 Shanti Prasad Jain told him that the

"controlling interest of the three jute mills as a recent division of control between him, his father-in-law and J. Dalmia came to

his share and that in all important matters he would be giving directions in the pending litigation."

In another place he said that Shanti Prasad Jain told him that there had been a "partition" but that this was "a general conversation and no details were given." Anyway, it is clear that what he was told was that the "partition" consisted of a "division of control".

Sonthalia is a member of the Calcutta Stock Exchange. He also explained that by "partition" he meant a division of control and he said that the "management had passed to the hands of Shanti Prasad Jain."

Now there is evidence to show that *even before partition the control was in practice separate* and that the dividing line between what was called the "day to day management" of the companies and the "control" over them was a very thin one and was largely theoretical.

In his application dated 1-3-1960 Shanti Prasad Jain said that a number of companies came into existence and were managed and controlled by the Dalmia Jain Group and that,

"one or other of the three individuals constituting the group Dalmia Jain group looked after and guided the management of each of the said companies."

"But that there were no 'water-tight compartments'."

In his evidence Shanti Prasad Jain said that the business was so huge that it was not possible for each member of the group to look after the same business nor was it desirable, therefore,

"the members of the D. J. Group were giving attention individually to different units and generally the affairs of one industrial enterprise were looked after by one member of the group. Sometimes even certain branches of the same company were looked after by different members of the group and *the other members only came to know of the activities of the industrial unit when he was consulted.*"

Shriyans Prasad Jain, W. 47, said that,

"By *and large* the management of the company was restricted to a particular person and his voice was predominant in the administration of the company."

He was asked to clarify this :

Q. Do I understand that by *and large* each one of the three was managing a different set of companies and looking after it?

A. Yes, that is exactly what I mean.

Q. Is that the way you distribute the management and *control* of these companies?

A. Yes Sir,

Bhagwandas Mehta, W. 13, told us about Dalmia Cement Company Limited which was a public limited company. Speaking of the pre-partition period he said that the majority of the shares in the company

were held by J. Dalmia and members of the family and concerns controlled by him. He said,

"As chairman he had a *controlling* hand in Dalmia Cement Ltd."

J. C. Jain, W. 41, was asked,

"What companies were managed by R. Dalmia?"

He replied,

"Actually he never managed any company directly as such. He left the day to day management of the companies either to J. Dalmia or Shanti Prasad Jain. But in major policy matters he was looking after all the companies also."

We gather from this that the management of the various companies was divided among the various members of the group. Whether this meant that the division of the management was between Shanti Prasad Jain and J. Dalmia alone or among the three is not clear; anyway there was nothing hard and fast and it was all very flexible.

We also gather that there was a very thin dividing line between what was called "day to day management" and "control". It seems that for all practical purposes the control as well as the management rested largely in individual hands, sometimes one, sometimes two, sometimes three, according to their convenience. In the matter of control those who were not in charge of a particular group of companies had a theoretical right of control as a member of the group, but in practice the others never interfered even on policy matters unless the member in effective control chose to seek their advice; and in the overall picture R. Dalmia's views prevailed.

In our opinion the evidence that we have examined above about the partition is more consistent with an internal re-allocation of control than with a *complete* dissolution of the kind that we have been asked to accept.



CHAPTER XII

ORAL EVIDENCE: SENIOR EXECUTIVES: AND EMPLOYEES

Mr. Misra also relied on 18 witnesses who were employees of the company in proof of the partition. We are not prepared to attach any importance to their evidence. We have seen how easily evidence of this kind was manipulated when we examined the account books and the scribe Laxmi Shankar Lal. The "memories" of these employees could have been "assisted" with equal ease. We need only refer to Shriyans Prasad Jain who is probably the most important man in this batch, and to one other, S. N. Verma.

Shriyans Prasad Jain (W. 47) was examined as a witness in another inquiry in 1958 when the affairs of the Bharat Fire and General Insurance Co. were under investigation. He said that the Dalmia Jain Group existed up to 1947. He was asked the following question by us about that statement,

"At the time you were examined . . . you had a clearer recollection of the time of the partition?"

He said,

"Yes I had."

He was then asked to explain why he now says that the partition was in May 1948 and not in 1947. His reply was that his memory was "refreshed when Shanti Prasad and J. Dalmia told him that the partition was in May 1948."

This shows how difficult it is to rely on most of the oral evidence. We find from Ex. 1216 that this group was "re-partitioning" in 1946, which of course means that they had already partitioned *something* before. Then we hear of another partition in 1947. In 1948 there is said to have been still another partition.

The earliest reference to a transfer of property is in the letter, Ex. 60, dated 7/8th March 1949. We find a reference there to a sale of the Lauriya Farm with instructions to relate it back to September 1948 and October 1948. At a still later date we find them changing their minds and shifting this transfer still further back to 31-5-48.

We think the truth is that they were faced with difficulties on all sides : the normal difficulties of how best to get round the income-tax laws; and abnormal ones created by their undisclosed assets and wealth; the pressures of the Income Tax Investigation Commission; the problems of an expanding business empire that was beginning to get out of control; problems of labour; and on top of it all family dissensions, especially among the ladies, because of R. Dalmia's many marriages. The group just did not know where they were. As K. N. Bajaj told us,

"These *talks* used to be in the family. Even in *separation* they found certain technical difficulties from income-tax and other points of view . . . and they used to consult the auditors and lawyers and others."

He was then asked,

"Did any one of *them* talk to you about the result of the Income-tax Investigation Commission Report?"

He replied,

"It went on for *many years* if I remember and at different stages different conclusions were arrived at."

We think that the possibilities of partition may have been explored and talked about; also that there was a re-distribution of management and control from time to time. But we are satisfied that there was no partition or dissolution of any kind on 31-5-48.

The only other witness among the employee class to whom we will refer is S. N. Verma (W. 50). He was the General Manager of Allenberry up to 31-12-49. We will do no more than comment on his demeanour. He gave his evidence-in-chief with great self-assurance, dictating carefully to the stenographer and giving him even commas and semicolons and full-stops. In some places he gave long and detailed answers that closely accorded with Shanti Prasad Jain's written statement even before counsel had finished putting him a question. He did not hesitate for dates or figures and boasted of the excellence of his memory and challenged us to test it. We did, and found that his memory on cross-examination was not as infallible as when he was reciting the facts contained in Shanti Prasad Jain's written statement; also the aplomb disappeared and he ceased to dictate the commas and semicolons, or even the full-stops.

In any case, so far as these witnesses speak of the "partition" their evidence is either hearsay—one does not know how many times removed—or is based on statements made to them by one or other of the three concerned and can stand on no higher footing than their own evidence and statements. Two of them, R. Dalmia and J. Dalmia have not entered the witness box at all; and we have seen what the evidence of the third, Shanti Prasad Jain is worth.

But apart from these criticisms, the matter that weighs most heavily with us is that not a single witness in this class has been able to produce anything in writing about the partition: not even a note or a memorandum or a letter. It seems unlikely and unreal that in a vast business organisation like theirs not a single employee received an order in writing or made a note of the orders and directions that they must have been given, or of the conversations that they had about such vital changes in their respective organisations.

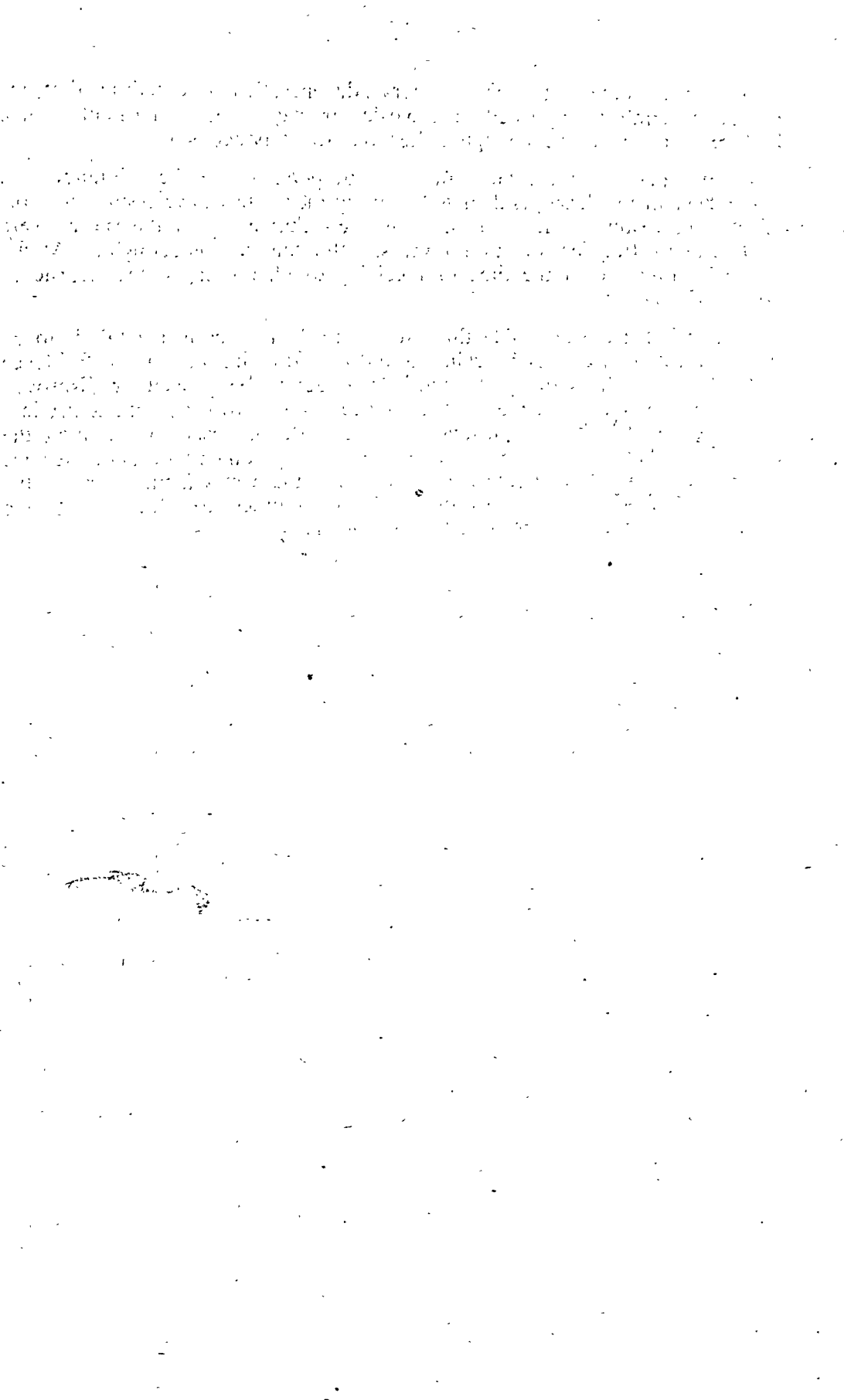
As against this we have letters that indicate the contrary; letters written by and received by employees who could not have been kept in ignorance of the partition if there had been one; and yet their letters show that they knew nothing. (See Exs. 809/76, 809/61, 756/223, 798/29, S. 77, 379/5, 379/4, 379/3, 799/160, 799/146, 799/142, 143, 799/86, 799/91, 756/119, 802/240. These extend from 21-8-48 to 9-8-59).

It is easy for witnesses to come forward now and say that there was a partition in May 1948. Some of them are not telling the truth; others have not told the whole truth; still others have told us what they probably now believe after recent conversations with Shanti Prasad Jain and others. It is easy to give a slight twist to an event that undoubtedly occurred. It is

easy to shift a date. It is easy to persuade oneself that something that one vaguely remembers happened in a particular way or at a particular time if there is a persuasive enough talker out to convince you.

Also, what about the large numbers of persons who held innumerable shares benami for these gentlemen? Surely there must have been some sort of letter or writing in their cases. We know that many of the shares were held in blank transfer for several years. But that is not enough! At the time of voting and at the time of receiving dividends it is the registered holder who counts.

We feel that the only safe thing for us to do in a case like this is to go by documents that cannot be gainsaid and then do what the Indian Evidence Act tells us to do, namely, to consider a fact to be proved or disproved according as its existence or non-existence "is so probable that a prudent man ought under the circumstances of the particular case to act upon the supposition that it exists" or "does not exist". Acting as prudent men we are not able to act upon the supposition that there was a partition or dissolution on 31-5-48. In view of the improbabilities to which we have adverted it would be imprudent to hold otherwise.



CHAPTER XIII

BROAD CRITICISMS

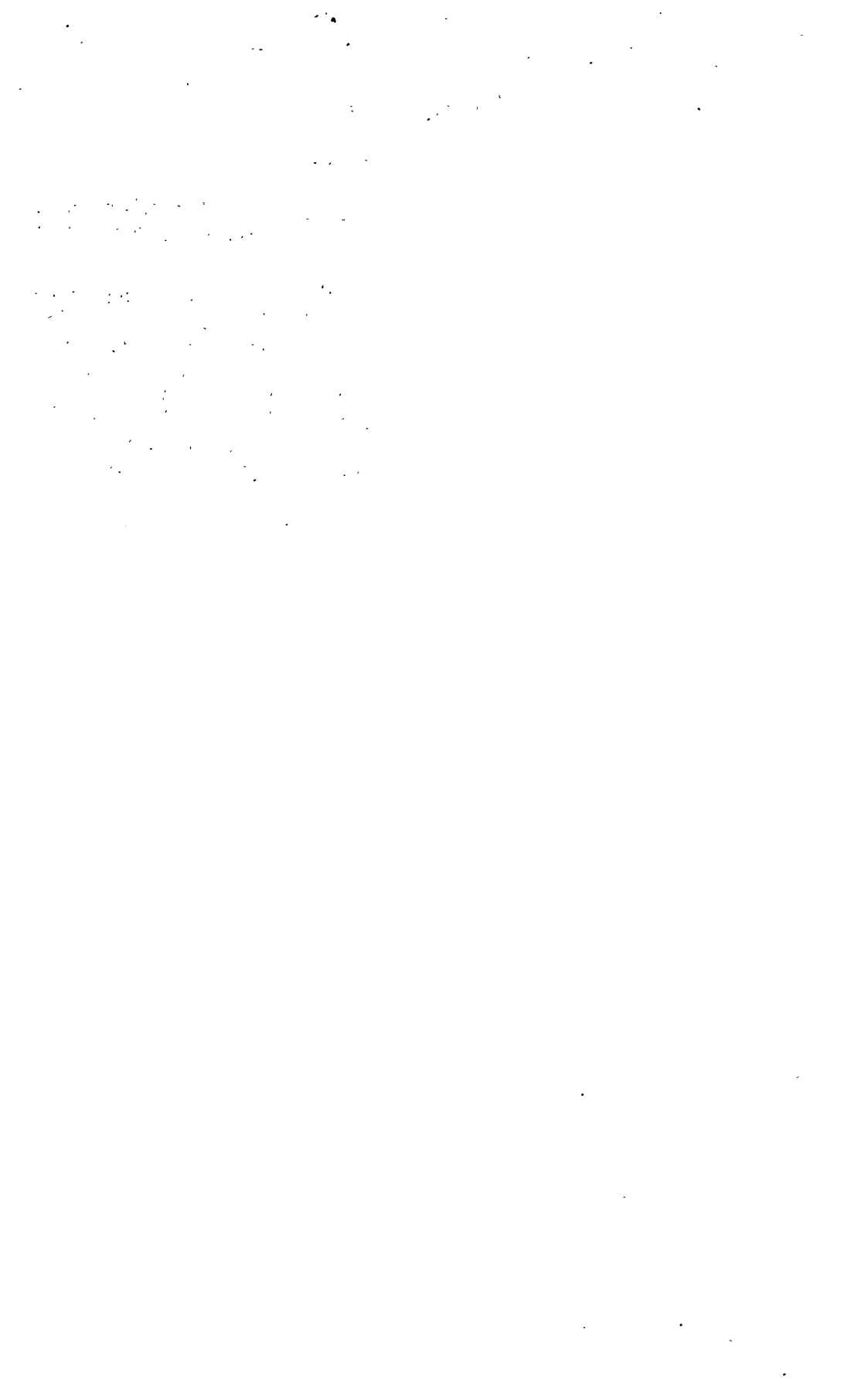
We will now deal with the remaining matters on which Mr. Misra relied to show implementation of the decision reached in April 1948 to partition on 31-5-48.

The first broad criticism that we will make of this evidence is that none of it is indicative of a partition on 31-5-48, which is the only partition pleaded. The acts relied on are all subsequent to 31-5-48 and not one of them relates back to that date except a certain transfer of Allenberry shares. Had there been reliable evidence, however, slender, to point to a partition on 31-5-48, then this evidence would have been useful as corroboration; but when we find that a false case of partition was set up we cannot use this as evidence to corroborate some other kind of partition that has not been pleaded.

The second criticism is that these acts are on different dates and are consistent with at least two other possibilities, namely either,

- (1) a reallocation of management without separation of title and interest; or
- (2) another kind of partition which was not pleaded, namely, a decision to separate by gradual stages sorting out and separating the total property, item by item, on different dates and at different stages.

The acts relied on as circumstantial evidence do not necessarily and irrefutably established the dissolution of the group on 31-5-48 that was pleaded.



CHAPTER XIV

SELLING AGENCIES

We will now consider Mr. Misra's argument's and will first examine what he said about the selling agencies. His case is that D.C.P.M. was the selling agent of a large number of companies before 31-5-48, among them.

A. Rohtas Industries

S. K. G. Sugar Mills

B. Raza Sugar

Bulund Sugar

Rampur Distillery

Raza Mills

Dalmia Cement

At the partition D.C.P.M. is said to have been allotted to R. Dalmia, the companies in group A above to Shanti Prasad Jain and those in group B to J. Dalmia.

After the partition D.C.P.M. naturally continued as the selling agents of the companies allotted to R. Dalmia; but it was replaced by other companies in the cases listed under A and B above, as below.

Taking Shanti Prasad Jain's group first, Ashoka Marketing replaced D.C.P.M. in this group. It was incorporated in July 1948 and almost immediately replaced D.C.P.M. in Rohtas Industries and S. K. G. Sugar Mills. The dates are as below.

In Rohtas Industries the replacement was on 1-8-49 (Ex. S. 1). The agreement (Ex. S. 49) was signed on 20-8-48.

In S. K. G. Sugar Mills the replacement took effect from 1-8-48 (Ex. S. 10). The agreement was signed on 25-2-49.

In J. Dalmia's group of companies Vyapari Ltd. replaced D.C.P.M. in three cases. Vyapari was incorporated on 13-7-48 and the replacements took place in Raza Sugar, Rampur Distillery and Bulund Sugar on 1-1-50.

The explanation given for the delay was that there was no hurry anyway; also, because D.C.M.P. owed the sugar companies Rs. 50 lacs it was not released until one of Shanti Prasad Jain's companies came to the rescue and stood guarantor for the debt.

In Dalmia Cement, D.C.P.M. was replaced by Cement Distributors Ltd. with effect from 1-8-48.

We were not shown any change in Rampur Maize.

Now, none of these 7 companies are companies that affect us. The changes set out may or may not be due to a partial dissolution effected in stages on those several dates. That is the utmost we are prepared to consider as a possibility about a dissolution.

Shanti Prasad Jain's attitude throughout has been that we are not permitted to ask any questions about any non-scheduled company; and whenever we tried to do so he refused to answer. He was only prepared to let us know what *he* thought would be useful to him and expects us to accept whatever he says or shows in connection with these other companies without question or probing. We are quite ready to exclude matters that relate to these other companies from consideration altogether and concentrate on the companies before us; but it is obviously impossible for us to take everything that Shanti Prasad Jain wants to consider in his favour at the face value that he gives it and not look further. He cannot have it both ways. Either this matter must be excluded from consideration altogether, or if *he* wishes to introduce it into evidence in *his* favour we must be afforded the right to ask probing questions about it. As we have not been allowed to do that we are not able to accept these instances as proof of a partition on 31-5-48.

Our main criticism of this evidence is that we have not been given the full picture and we have not been allowed to construct one for ourselves. If a family or a partnership or a group possesses, shall we say, 300 items of joint property entered in different names but with common ownership, it is no use showing a few changes in 2 or 3 items and trying to use that as a basis for proving a partition. This is particularly so when, (a) there is a refusal to divulge the position in the remaining 297 items, or even to allow a probe here and there as random tests; (b) when there is a refusal to give a full picture even as regards the 2 or 3 items that are set forward as show pieces; and (c) when the change is compatible with cause other than partition.

CHAPTER XV

MANAGING AGENCIES

We will now turn to the arguments about the managing agencies.

Dalmia Jain & Co. were the managing agents of the following companies that are said to have gone to Shanti Prasad Jain at the partition.

S. K. G. Sugar
Rohtas Industries
Dehri Rohtas Light Railway
Bharat Collieries.

Also of the following company that is said to have been assigned to J. Dalmia :

Dalmia Cement

and of

Dalmia Jain Airways,

which we are told went to R. Dalmia.

The managing agency company itself (Dalmia Jain & Co.) is said to have been assigned to Shanti Prasad Jain.

There was naturally no change in the four companies that went to Shanti Prasad Jain because they, and the managing agency company were all assigned to him. But Sahu Jain & Co. was incorporated by him as a separate managing agency company on 1-11-50 and it took over the managing agency of the four companies assigned to Shanti Prasad Jain from that date. But Dalmia Jain & Co. was not dissolved and continued its independent existence as a Shanti Prasad Jain concern, and it continued in management of Dalmia Jain Airways down to 9-4-52.

As we have seen, Dalmia Cement is said to have been assigned to J. Dalmia. But in his case we find no change in the managing agency till 2-3-50. On that date Hari Bros was incorporated as a J. Dalmia managing agency company, and, with effect from 1-4-50, it took over the managing agency of Dalmia Cement from Dalmia Jain & Co.

But the most significant fact of all is that there was no change in the case of Dalmia Jain Airways (which is said to have been assigned to R. Dalmia) till 9-4-52.

The explanation given for this is that there was an internal change of management in Dalmia Jain & Co., and so, though it continued to function under its old name, the companies under its management were divided among the three members of the group and no one of them interfered with the management of either of the others.

In our opinion this explanation is more consistent with a change of management and administration than with a complete and final partition; and if that was the case with this company, there is no reason why similar changes elsewhere should not be assignable to the same cause.

Mr. Misra said that on 31-8-48 R. Dalmia had only 25,000 shares in Dalmia Jain & Co. (through the Dalmia Investment), out of a total of 50,000 and that he transferred them all to J. Dalmia and Shanti Prasad Jain on that date (Exs. S. 148 and S. 316). After that R. Dalmia ceased to have any interest in this concern.

We find, however, that this process of transferring shares was continuing from 1946 onwards. If therefore, the transfers prior to 1948 were not referable to a partition but were made for other reasons, there is no reason why we should conclude that continuance of the same process after 31-5-48 should indicate partition.

Mr. Misra told us that on 1-11-45 J. Dalmia and Shanti Prasad Jain each held a total of 6,250 shares, out of a total of 50,000 in Dalmia Jain & Co. and that the balance 37,500, roughly 75% of the whole, were held by J. Dalmia (Ex. 317).

On 20-9-1946 R. Dalmia transferred 1,750 of his shares to Shanti Prasad Jain and another 4,500 on 30-9-1946 (Ex. 317).

In October 1946 J. Dalmia got 6,250 shares from R. Dalmia with the result that on that date R. Dalmia had 50% of the shareholding in Dalmia Jain & Co.; and he cleared out altogether on 31-8-48, so far as the shareholding position was concerned, when he transferred 12,500 shares each to Shanti Prasad Jain and J. Dalmia.

But, J. Dalmia continued to be associated with the company down to 30-3-50 (Ex. J. 38/3). It was not till that date that he transferred his shareholdings to Shanti Prasad Jain's company Ashoka Marketing.

Now the significant thing here is that Dalmia Jain & Co. continued as the managing agents of Dalmia Jain Airways (as R. Dalmia concern after partition) down to 9-4-52. If R. Dalmia cleared out completely on 31-8-48, then, either Shanti Prasad Jain or J. Dalmia, or both must have been in charge of the managing agency from 1-9-48 till 9-4-52; and yet we are told that the management of D. J. Airways was handed over to R. Dalmia from 31-5-48 and that he was in sole management from that date onwards.

The explanation given was that a resolution was passed by the Board of Directors of Dalmia Jain & Co. on 5-10-48 (Ex. 195) under which it was decided that,

- (1) R. Dalmia will "*continue* to look after the affairs of Dalmia Jain Airways";
- (2) Shanti-Prasad Jain will "*continue* to look after the affairs of Rohtas, Bharat Collieries and S. K. G. Sugar"; and
- (3) that J. Dalmia be and is hereby called upon to look after the company's business particularly in respect of the affairs of the company as managing agents of Dalmia Cement & Co.

Each was to receive a salary of Rs. 7,500 a month and we find that R. Dalmia was paid this salary right down to January 1952 (Ex. 309).

Now the language of the resolution does not indicate any change unless there was a change in the remuneration. R. Dalmia and Shanti Prasad Jain were directed to *continue* to do after 5-10-58 exactly what they had been doing up to that date. Far from indicating a partition this resolution indi-

cates a continuance of the old relationship; and the subsequent conduct of the three members of the group bears this out.

We have already commented on the fact that Dalmia Jain & Co. was not included in what is supposed to have been the partition list, Ex. S. 75. If the arrangement in April 1948 was that the management of Dalmia Jain & Co. was to continue as before and all that they were considering on that date was how to readjust the internal management of some of the large number of companies under their control, then it is understandable that companies that were not to be affected by the reshuffle of management should be left out of the list.



CHAPTER XVI

DIRECTORSHIPS

Reliance was next placed on the changes in directorships. The pattern here is so confused that it can lead to no conclusion at all.

In the first place, these directorships meant nothing. They were empty forms to comply with the requirements of the company laws. The directors, other than the members of the group are admitted dummies who merely did as they were told and echoed their masters' voice—admitted that is to say, in the arguments, because Shanti Prasad Jain insisted in his evidence that the directors were not dummies. We will bring this out when we deal with the respective companies. Shanti Prasad Jain himself told us that he did not attend several directors' meetings because,

“that practice was widely prevalent. Many persons held the position as director, but they did not attend the Board meetings for a considerable time.”

Also,

“I do not think it was necessary for me to attend meetings of the Board of Directors because there were persons who are quite competent to carry the responsibilities.”

Cutting through the fog of words, this means in plain English that there was no need for him to attend because he was satisfied that the puppets on the directorship stage would act according to his instructions.

Also, when it was pointed out that the members of the group remained on as directors in companies assigned to the others long after it was necessary, Mr. A. C. Mitra said in his arguments in Bombay, “even if I remained on the Board of Directors, I danced to the tune of the person to whom the company went.”

In the second place, we find that there was a change of directorships even before the partition, therefore similar changes after the partition do not necessarily indicate a dissolution of the group.

In the third place, the office of director was not an indication of membership of the Dalmia Jain Group. For example, R. Dalmia was not a director of any scheduled company till 4-2-1949. He joined D. J. Airways in that year; and yet it is admitted that he controlled this company from the beginning. In fact, the whole effort of counsel for Shanti Prasad Jain and J. Dalmia has been to throw the blame for such of the malpractices that cannot be denied, on R. Dalmia.

Shanti Prasad Jain's resignations are as follows :

1-11-47 from	D.C.P.M.
4-12-47	D.D.C.
22-7-48	Bharat Insurance.
	Dalmia Jain & Co. (Jind State)
	Dalmia Jain Airways.
4-12-48	Allenberry.
	Allen Motors.

Our first comment on this is that two of these resignations are before 31-5-48. Our next comment is that it was not necessary to wait as long as those dates before resigning. If the decision in April 1948 was to make a complete and final dissolution as from 31-5-48, and if the different companies were allotted in April, as they are said to have been, nothing would have been simpler than to send in letters of resignation at once. Shanti Prasad Jain says that though he continued as director he either did not attend meetings or only attended those where formal business relating to the transfer was to be transacted. We find this unconvincing, especially after his admission that he sometimes did not attend meetings because there were others who were competent to carry on.

When we look into the facts more closely we find that the pattern is blurred and leads nowhere. We will consider here the question of senior employees who were also directors, along with the directorship of the group, because it was said that the senior executives were also reshuffled in consequence of the partition.

Shanti Prasad Jain

We find that he was a director of Dalmia Cement on 30-7-1958 (Ex. J. 8) and of Bharat Fire & General Insurance Co. Ltd. upto 20-5-1950 (Ex. 848). These companies are said to have been allotted to the share of Jaidayal Dalmia.

J. Dalmia

He did not file a list of directorships held by him prior to 31-5-48, in companies under the control of D. J. Group. He did not state in his application dated 1-3-1960 that he had resigned directorships in the companies allotted to R. Dalmia and Shanti Prasad Jain. He was a director in D.D.C. Ltd. till 16-3-1950 (Ex. 868) and Dalmia Jain Jind State till 30-3-1950. He remained a director in Dalmia Jain & Co. till 5-12-1950 (Ex. 780).

H. D. Bishnoi

He was No. 1 executive at Dalmianagar before the partition. After partition he worked as No. 1 in Rohtas Industries, the company which, according to Shanti Prasad, was allotted to him. He was a director of the following companies said to have been allotted to R. Dalmia:

(a) D.C.P.M. from 17-9-44 to 12-12-49.

(b) Allen Berry & Co. Ltd. from 3-4-45 to 14-9-50.

He was also a director of Dalmia Cement on 27-5-50 (Ex. J. 6).

Shital Prasad Jain

He was a Senior Officer of Rohtas Industries before the partition and became an officer of D.C.P.M. after partition on 15-12-48. He joined Shanti Prasad Jain on 1-4-52. He acted as a director in Govan Agencies (Ex. J. 1) on or about 10-12-48 and of Raza Sugar Company Ltd. on 1-1-1950 (Ex. J. 2). These companies were said to be of J. Dalmia.

J. M. Gupta

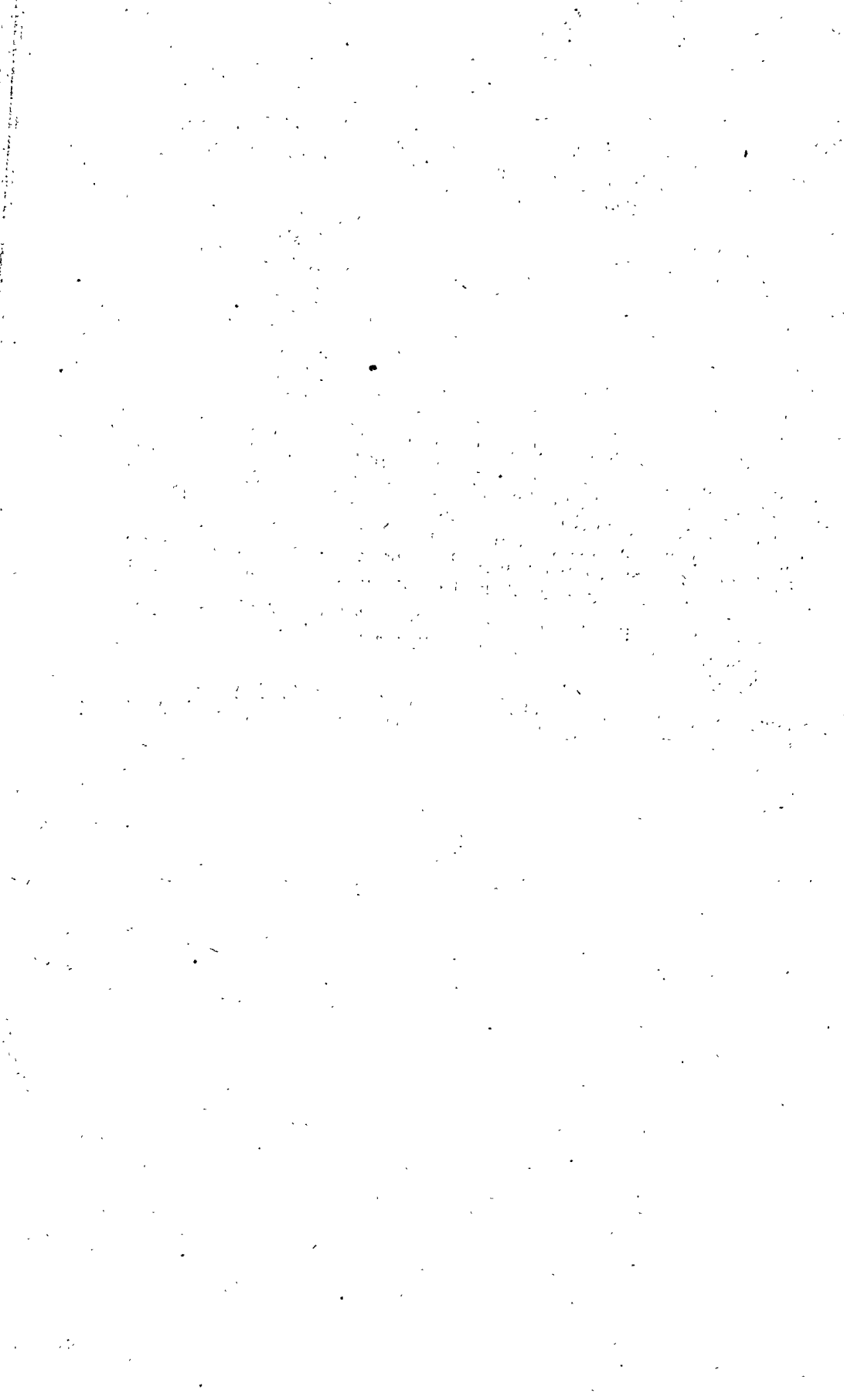
He was connected with D. J. Airways, Allenberry and D.C.P.M. before 31-5-48. After 31-5-48 he went to D.C.P.M. Yet we find him acting as a director of the following J. Dalmia concerns on,

15-7-48 Cement Distributors	..	..	..	..	..	(Ex. J. 10 & J. 62)
19-7-48 Cement Distributors	..	..	..	..	..	(Ex. J. 63)
30-7-48 Cement Distributors	..	..	..	..	..	(Ex. J. 23 & J. 64)
15-12-49 Vyapari Ltd.	..	..	..	..	..	(Ex. J. 2)
Raza Sugar	..	..	..	..	..	(Ex. J. 2)
19-12-49 Rampur Distillery	..	..	..	..	..	(Ex. J. 4)
Vyapari	..	..	..	..	..	(Ex. J. 4)
27-12-49 Bulund Sugar	..	..	..	..	..	(Ex. J. 3)
Vyapari	..	..	..	..	..	(Ex. J. 3)

Leaving aside the question of directorship for the moment and going back to the Lauriya Farm, we find that Shital Prasad Jain and H. D. Bishnoi were both acting in the old way on 28-2-49 and 8-3-49 just as if there had not been a partition on 31-5-48. We also find that Laxmi Shankar Lal was still writing the personal books of all three in March 1949 and that Rajkumar Lal Srivastava was still maintaining the account books of all three in 1949. Shanti Prasad Jain's explanation of this was that,

"In the transition period there was a lot of *gol mal* in the sense that that there was no proper authority because things were decided here."

Our conclusion about the reshuffling of directorships is that we are not able to draw any conclusion about a partition on 31-5-48 from this reshuffle of directorships.



CHAPTER XVII

SENIOR EXECUTIVES

The reshuffle of senior executives is bound up with that of directorships. Here again the facts are inconclusive because (1) there must always be a constant reshuffle of personnel in any large undertaking; (2) a transfer of personnel is often for personal reasons; and (3) if there was a realignment of management for internal reasons unconnected with partition a reshuffle of executives would be inevitable. For example, the resignation of J. P. Agarwala from Allenberry in March 1948 seems to have been because he wanted more money and he seems to have come back in June 1948 because he was given higher pay.

So also the resignation of C. D. Pande (W. 39) seems to have been for personal reasons. He had a difference of opinion with Agarwala and told him,

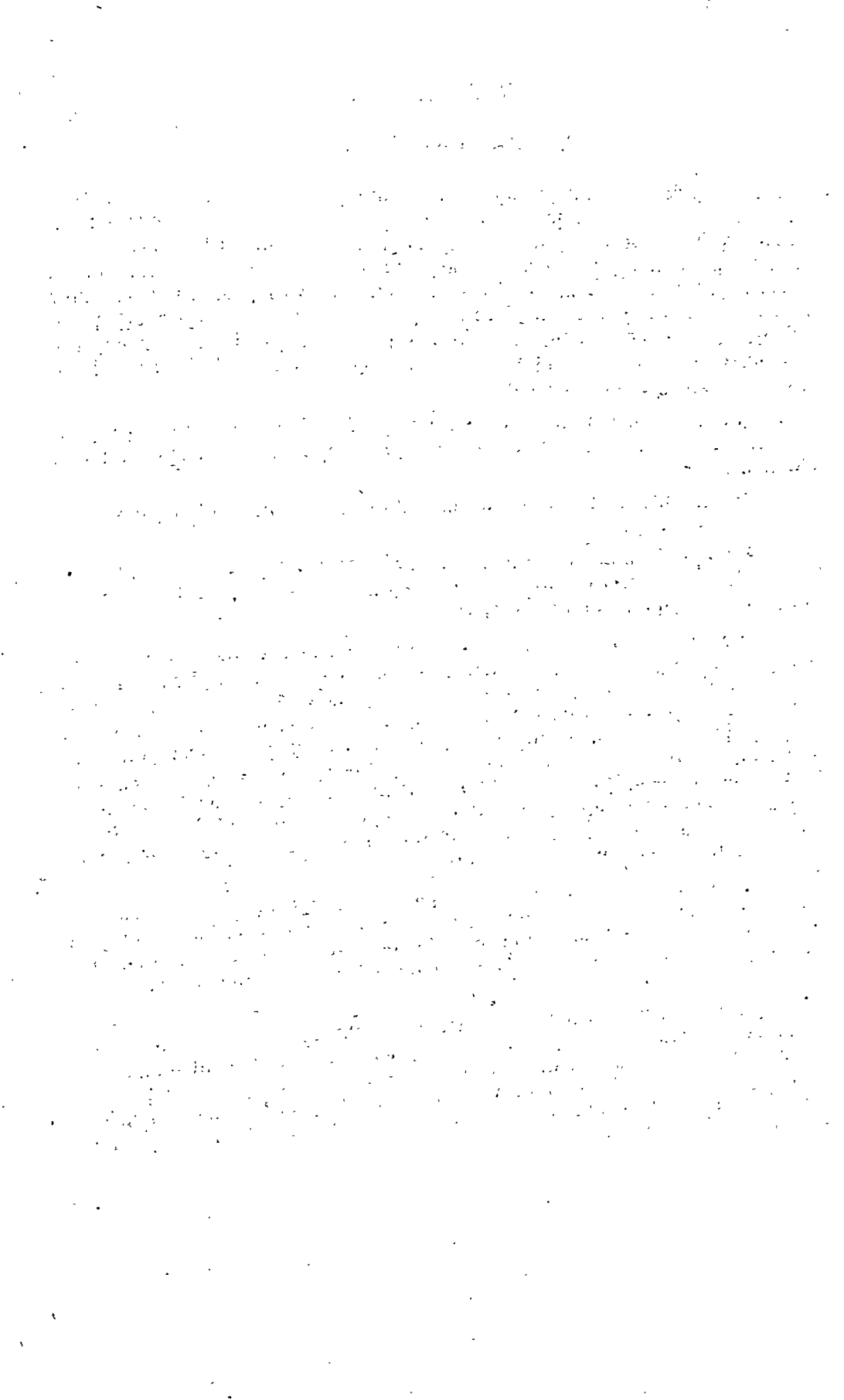
"I am not accustomed to put up with this nonsense and you carry on. So I left."

J. M. Gupta is another example. In 1937 he was with Bharat Insurance. In 1942 he was transferred to D.C.P.M. and in 1947 he went to Govan Bros. These are reshuffles before the partition.

In 1948 Govan Bros. was assigned to J. Dalmia at the partition. In 1949 J. M. Gupta was appointed General Manager of Indian National Airways which went to J. Dalmia. We also know that he was a director of D. J. Airways down to 1949 and we have seen that he was a director of many J. Dalmia concerns after the partition despite his association with R. Dalmia in R. Dalmia concerns. So his transfers from one company to another are quite inconclusive. In fact, if these changes point to anything, they show that the group was still functioning as a group and drawing freely on the personnel of the various companies in different operational groups according to the exigencies of the situation.

The most material evidence about partition would be the ownership of the property and the shares and where the funds came from and who paid for what. That has been withheld. We have been shown just fragments of the whole. We have been shown manipulated books and we have been told a series of lies.

There is evidence to indicate that there might have been a step by step partition by gradual stages; but that evidence is equally attributable to re-allocation of management, or to one of the many temporary expedients that appear to have been resorted to from time to time without reaching a final solution. It would be unsafe to base any sure conclusion of partition on this kind of evidence.



CHAPTER XVIII

OTHER DOCUMENTS

In support of the plea of dissolution of the D. J. Group as from 31-5-58, reliance was placed on the following documents :

- (a) Report of Lok Sabha Debates for 1955 Ex. 1243/S244
- (b) Report of Lok Sabha Debates for 1955 Ex. 1244/S245
- (c) Some notes and reminiscences of Ramkrishna Dalmia Ex. 1005/S43
- (d) Report dated 23-5-53 of D.P. Khosla & Co. Ex. 240
- (e) Report dated 14-3-1959 of Shri R. M. Bhandari and Shri S. K. Bhattacharya in Bharat Fire and General Insurance Ltd. Ex. 848

In our opinion none of the documents can be regarded as legal evidence of dissolution. We will deal with them serially.

On 30th September the following short notice question was asked by Shri G. P. Sinha.

S. N. Q. No. 17 : Will the Prime Minister be pleased to state :

- (a) Whether it is a fact that the Minister of Commerce and Industry visited Dalmianagar on the eve of Shri Ramkrishna Dalmia's arrest;
- (b) Whether the Finance Minister is also visiting that place very soon; and
- (c) If so, the purpose of their visits.

The Prime Minister's reply was as follows :—

(a) & (c) The Minister of Commerce and Industry visited Dehri-on-Sone (Dalmianagar) on the 23rd September, 1955. The visit was part of a tour in Bihar arranged by the Bihar Government to enable him to acquaint himself with industrial enterprises in Bihar. There was no connection between his visit and the arrest of Shri Ramkrishna Dalmia. It is understood that Shri Ramkrishna Dalmia has no interest or connection now with the industrial units of Dalmianagar.

(b) The Finance Minister is not visiting that place.

The last sentence in the reply has been underlined by us. The reply cannot be construed as evidence of dissolution on 31st May, 1948. It means that on 30th September 1955, when the question was asked Ramkrishna Dalmia had no interest or connection with the industrial units of Dalmianagar.

The question and reply are printed at page 5,442 of the report.

(b) On 28th November, 1955 Shri Feroze Gandhi put questions in respect of the reply of the Prime Minister given on 30th September, 1955.

The questions and answers as recorded at pages 295-296 are as follows :—

Shri Feroze Gandhi.—On 30-9-1955, the Prime Minister in answer to a short notice question stated that Shri Ramkrishna Dalmia had no connection with Dalmianagar implying thereby that Shri Ramkrishna Dalmia had no business relationship with Shri Shanti Prasad Jain. May I know on what authority was the statement made—what evidence was in the possession of Government which led the Prime Minister to make this statement?

Shri C. D. Deshmukh.—I expect it was the common information. Government have had no occasion yet to investigate. There was a partition of the interests between Shri Ramkrishna Dalmia, his brother Shri J. Dalmia and his son-in-law Shri Shanti Prasad Jain, some years ago.

Shri Feroze Gandhi.—My question was this. What evidence was in the possession of the Government which led the Prime Minister to make that statement?

Shri C. D. Deshmukh.—This was the common information. We have no documents in our possession because we have had no occasion yet formally to investigate into that matter. [The underlining is by us].

Shri Feroze Gandhi.—Can I take it that the Government have no evidence?

Shri C. D. Deshmukh.—I have stated the nature of the evidence.

It is quite clear from the reply of Shri C. D. Deshmukh that the Government did not investigate into the question of partition and had no evidence in its possession in proof of partition. Reference to partition having taken place some years ago between Ramkrishna Dalmia, Jaidayal Dalmia and Shanti Prasad Jain cannot be taken as proof of dissolution on 31-5-58 alleged before us.

The decision of the Commission on the issue of dissolution has to be based on legal evidence and not on the opinion expressed by the Government or Inspectors on former occasions.

Item C. The observations of Ramkrishna Dalmia at page 114 on which reliance is placed are :—

“Shortly after I wrote this book, I was deprived of half of my energy and strength in the shape of my brother and son-in-law, who were my right and left hands, when they separated from me in business. By the grace of God, they have prospered and extended their business very much. Perhaps it was their good luck that I was able to amass much wealth when they were with me.

“Exactly twelve years ago, in May 1947, a short while after I wrote this book, I resolved to expiate the sins of my past lives and purify myself by performing penance.”

This book is said to be second edition. The date of the publication is mentioned as May, 1959. The first edition was published in 1948. In the preface it is stated that Ramkrishna Dalmia decided to publish his thoughts in May, 1947.

There is no reference to dissolution or partition as having become effective from 31-5-1948. The circumstances leading to separation have not been

mentioned. The vague statement about the separation in business at page 114 cannot be accepted as proof of the story of dissolution alleged by Shanti Prasad Jain and Jaidayal Dalmia. These observations appear to have been made with the object of strengthening the case of dissolution before the Commission. There is reference to this Commission at page 117. These observations would have been of value if they were made shortly after 31-5-1948.

The proper course for them was to examine Ramkrishna Dalmia as a witness to prove dissolution.

(d) The next item is Ex. 240, the report in respect of D.C.P.M.

At page 57 of the report, there is reference to the expression erstwhile Dalmia group. The argument of Counsel was that the expression meant that the Dalmia group had ceased to exist at the relevant time. D. P. Khosla in the witness box stated that the expression was based on the information given to him by S. N. Dudani. He did not make any investigation into the question of dissolution of the group. At page 30 of his evidence, he stated.

"As the matter of disassociation of R. Dalmia from his previous associates was not a matter referred to me for investigation—I did not go into the question of disassociation of the Dalmia Jain Group."

The observations of the Inspector in the report have no evidentiary value.

(e) The last item is the report of the Inspectors Ex. 848. The following conclusion of the Inspector in paragraph 148 at page 10 is strongly relied on to prove partition. "Paragraph (iii) The affairs of the company were controlled by the members of the Dalmia Jain Group i.e., Sarvashri Ram-Krishna Dalmia, Shanti Prasad Jain and Jaidayal Dalmia, till the partition in the Dalmia Jain Group in May 1948. Thereafter, Shri Jaidayal was the person who was interested in the financial success or failure of the company and he was able to control and materially influence the policies of the companies."

The conclusion was apparently based on the statement of Shanti Prasad Jain. There was no independent investigation or inquiry into the question of partition. It is surprising that such a conclusion should have been reached by the Inspector in view of the contradictory and indefinite nature of the evidence on this point. For instance Shriyans Prasad Jain stated to the Inspectors in evidence that "This Dalmia Jain Group continued as such probably sometime up to 1947."

Jaidayal Dalmia had deposed "After the partition in the family sometime in the year 1948, it ceased to be so." He did not then say that the dissolution of the D. J. Group became effective as from 31-5-48. Shanti Prasad's evidence referred to May 1948 in the following passage.

"Generally speaking Sarvashri R. Dalmia, J. Dalmia and myself were carrying on the business as members of one group till May 1948 which was commonly known as Dalmia Jain Group. The controlling shares and interest in Bharat Fire after the cessation of Dalmia Jain Group went to Shri J. Dalmia." His answers to Questions 17, 18 and 19 at pages 114-115

are hesitant and unsatisfactory. They weaken his evidence on the point of dissolution. The Inspectors did not critically examine the evidence on the point of partition. They accepted the evidence at its face value. It is unnecessary to labour the point further. The conclusion of the Inspectors is not legal evidence. It is irrelevant in the proceedings before us. It is for us to decide if there was a dissolution of the group with effect from 31-5-48.

The aforesaid documents do not constitute proof of dissolution alleged by Shanti Prasad and Jaidayal Dalmia.

CHAPTER XIX

SUMMARY OF CONCLUSIONS

Viewing the evidence as a whole we find that the one concrete fact on which we can seize with certainty is Ex. 1216. That is destructive of the kind of association that Shanti Prasad Jain and J. Dalmia have pleaded and tried to prove.

That in itself weakens the story of dissolution that has been set up; so do the manipulations of the personal account books of Shanti Prasad Jain and J. Dalmia, coupled with the false evidence led to cover up the manipulations; as also the conduct of Shanti Prasad Jain in declining to reveal the full picture and his constant shifting of ground and attempts to improvise at every stage where he was cornered.

The direct oral evidence of dissolution is inconclusive because,

- (1) no witness speaks of a dissolution as from 31-5-48 except Shanti Prasad Jain;
- (2) not a single document or letter or note mentions the date 31-5-48 except Ex. J. 7, dated 21-9-52; and that says "as from the month of June 1948";
- (3) the witnesses are not clear about what they mean by a "partition": some think it was the break-up of a partnership; and one says that he thought that shares, bank accounts and liabilities were divided;
- (4) some witnesses admit that their memories are based on what Shanti Prasad Jain told them shortly before they gave evidence; and
- (5) the demeanour of certain witnesses was unsatisfactory.

The circumstances are destructive of the kind of dissolution that was set up, because,

- (1) Ex. 1216 establishes joint ownership of property as tenants-in-common, a pooling of dividends and a distribution of joint income in clearly defined shares;
- (2) Ex. J. 7 says that the "assets" were divided between themselves;
- (3) R. Dalmia says in his application, dated 22-12-60 that the group had partitioned "*all their properties including shares in companies*";
- (4) the way in which their association involving property worth crores of rupees is said to have been dissolved is so improbable that it cannot be believed;
- (5) it is unlikely that the kind of association envisaged by Ex. 1216 would be severed without a carefully drawn up instrument of partition; and it is unlikely that there would not be a single letter, or note, or document, or memorandum, except Ex. J. 7,

among the archives of this vast array of companies and executives, that unequivocally speaks of a partition of any kind, let alone one as from 31-5-48.

That the circumstantial evidence on which reliance is placed by Shanti Prasad Jain and J. Dalmia is inconclusive, because,

- (1) the resignation of directorships;
- (2) the reshuffling of senior executives;
- (3) the transfers of selling and managing agencies; and
- (4) the re-shuffling of shares,

are as consistent with a reorganisation of management as with a dissolution of the Dalmia Jain Group. Some of these things went on before the dissolution pleaded so, their continuance after it gives no clear picture of a dissolution.

It is our view,

- (1) That there was an association known as the Dalmia Jain Group and that it was in existence in the year 1946. We do not know when it was formed, nor do we know what shape it took originally; nor is that necessary. But we do know that these three persons were in control of a number of companies from at least 1936;
- (2) That this group owned vast properties running into many crores of rupees, in the shape of cash, bank balances, shares in limited liability companies, and at least one item of immovable property;
- (3) That these assets were owned by the group as such and not by individual members;
- (4) That the income from these assets was thrown into a common pool and from there distributed among the members in defined shares from at least 15-7-46;
- (5) That the group was not dissolved on 31-5-48 as alleged;
- (6) That in or about April 1948 the members of the group explored the possibility of reorganising themselves or effecting a dissolution by stages;
- (7) That their affairs were so interlocked and complex because of black money and secret, undisclosed assets and undetermined income-tax liabilities, that this was found not to be easy; and there were a series of long drawn out discussions and conferences with lawyers, auditors and officers of their companies;
- (8) That varying re-adjustments were effected in certain of their concerns at different times;
- (9) That some time between February and March 1949, it was decided that Shanti Prasad Jain should pay R. Dalmia and J. Dalmia for their shares in the Lauriya farm which then stood in the sole name of Shanti Prasad Jain though he was a *benamidar* to the extent of 95%; and
- (10) That at some undisclosed date after March 1949, and before 31-9-52, Shanti Prasad Jain and J. Dalmia decided to set up a case about a dissolution that had been effected and *finalised* on 31-5-48.

CHAPTER XX

THE DALMIA JAIN GROUP: CONCLUSIONS

We will now crystallise our views about the working of the Dalmia Jain Group and the manner in which the responsibility of each member is to be fixed for the various malpractices in the management of the ten companies under investigation.

We find from Ex. 1216 that, from at least 1946 onwards, the group owned property in common and that it pooled its income and then divided it among its members after meeting certain liabilities. The D. J. Group was therefore clearly an association for monetary gain.

We accept the statements of J. Dalmia and Shanti Prasad Jain that up to at least 31-5-48 the group controlled a large number of companies and industrial concerns, including the scheduled companies and Dalmia Dadri Cement.

We also accept the evidence of Shanti Prasad Jain in so far as he says that the undertaking was much too vast for each member to devote individual attention to each company and concern. Therefore they divided the control and management between themselves for administrative and business reasons and each took control of a group of companies or concerns. Theoretically the right of control vested in the group as a body but in practice the control was ordinarily exercised individually, though on behalf of the whole.

We agree that this means that each member of the group would not necessarily know of all that was going on in a concern that had not been assigned to him for management. The others may have had a general idea but it would be unfair to saddle any member with responsibility for any particular malpractice *simply because he was member of the group.*

The responsibility of any particular member of the group in respect of a matter with which he is not shown to have been associated in some way would be vacarious at best; and that only because he stood to gain when the overall profits were separated from the general pool and divided up. But we feel that that kind of responsibility is too theoretical to be of practical value for our purposes. So we do not intend to found upon it.

Evidence to indicate his association either with a particular malpractice or with the management of that particular concern would be necessary. That is the line that we intend to adopt in apportioning individual and group responsibility.

We are not concerned with the management of companies that are not under investigation and do not intend to make any general statement regarding them beyond what we have said above. But, so far as the ten companies under investigation are concerned we accept the evidence of the witnesses who say that in these companies the voice of R. Dalmia was predominant both before and after 31-5-48. This, however, is not to ignore the admissions that the group was in overall control up to 31-5-48.

We do not accept the story that the group broke up on 31-5-48. But we are not prepared to saddle any particular member of the group with responsibility for any particular act simply because he is or was a member of the group. But as we accept the evidence that R. Dalmia was in overall control of the ten companies under investigation and that his decision prevailed in the overall picture we think it will be fair to infer that any member of the group who is shown to have been associated with any particular transaction in this group of ten companies acted as a member of the group for the benefit either of the group or at least for the benefit of R. Dalmia and himself.

We will now proceed to the several companies.

New Delhi
15-6-62

New Delhi
15-6-62

Bombay
15-6-62

New Delhi
16-6-62

(VIVIAN BOSE) (V. R. SEN) (N. R. MODY) (S. C. CHAUDHURY)

APPENDICES



हम श्री रामकृष्ण डालमिया सुपुत्र स्व० सेठ हरजीमल जी डालमिया, श्री जयदयाल डालमिया सुपुत्र स्व० सेठ हरजीमल जी डालमिया, और श्री शान्तिप्रसाद जैन सुपुत्र स्व० साहु दीवान सिंह जी ने अपने मूलधन का, जो नकद और शेयरों के रूप में जहां भी जो कुछ है, निम्नलिखित रूप से पुनः विभाजन कर लिया है :—

तीस प्रतिशत वर्मादा ट्रस्टों में या वर्मादा कम्पनी विशेष में दिया जायगा। और बीस प्रतिशत श्री रामकृष्ण डालमिया के, पचीस प्रतिशत श्री जयदयाल डालमिया के और पचीस प्रतिशत श्री शान्तिप्रसाद जैन के हिस्से में रहेगा। शेयरों का जो डिविडेण्ड आयेगा, वह प्रतिवर्ष उपयुक्त हिस्सों के अनुसार अलग-अलग वर्मादा ट्रस्टों या वर्मादा कम्पनी विशेष में तथा तीनों मालिकों में बंट जायगा। इसी प्रकार—वर्तमान तथा भविष्य में होने वाली कम्पनियों की मैनेजिंग एजेंसी और सेलिंग एजेंसी आदि में उपयुक्त विभाजन के अनुसार हिस्सा रहेगा। जहां आजकल अन्यान्य लोगों में पैसों के लिए परस्पर बड़ी लड़ाइयां हुआ करती हैं, वहां श्री भगवान की कृपा से हम लोगों में बड़ी प्रसन्नता के साथ यह काम हो गया। बल्कि तीनों ही अपने हिस्से में कम लेकर दूसरों को अधिक-से-अधिक देने तथा अधिक-से-अधिक वर्मादा फण्ड में देने के लिए वार-वार आग्रह करते रहे हैं। अन्त में सबके सम्मान्य श्री रामकृष्ण डालमिया की आज्ञानुसार उपयुक्त रूप से पुनः विभाजन कर लिया गया। परन्तु प्रत्येक को अन्त में इस बात को लेकर असन्तोष ही रहा कि मेरे हिस्से में अधिक आया है।

यह निश्चय हुआ कि श्री रामकृष्ण डालमिया अपनी आमदनी में से प्रतिवर्ष अपनी आवश्यकतानुसार घर-खर्च कर सकेंगे। श्री जयदयाल डालमिया अपनी आमदनी में से प्रतिवर्ष सवा लाख रुपए तक तथा श्री शान्तिप्रसाद जैन अपनी आमदनी में से एक लाख रुपये तक खर्च कर सकेंगे। इसके अतिरिक्त शेष रकम तीनों के खातों में अपने-अपने हिस्से के अनुसार जमा हो जायगी।

श्री विष्णु हरि डालमिया को घर-खर्च के लिए पांच हजार रुपये प्रतिमास कम्पनियों से दिये जायेंगे।

श्री रामकृष्ण तथा श्रीजयदयाल डालमिया की पूजनीय माता जी को हाथ-खर्च आदि के लिए प्रतिमास दो हजार रुपये और श्री रामकृष्ण डालमिया की धर्मपत्नी श्रीमती दुर्गावती डालमिया को हाथ-खर्च के लिए प्रतिमास दो हजार रुपये श्री रामकृष्ण डालमिया और श्री जयदयाल डालमिया की आमदनी में से दिये जायेंगे।

यह निश्चय हुआ कि मैनेजिंग एजेंसी के शेयर तीनों मालिक ऐसी किसी व्यक्ति के नाम पर ट्रांसफर नहीं कर सकेंगे जो श्री रामकृष्ण डालमिया, श्री जयदयाल डालमिया और श्री शान्तिप्रसाद जैन के परिवार से सीधा पीढ़ी (main line) का सम्बन्ध न रखता हो।

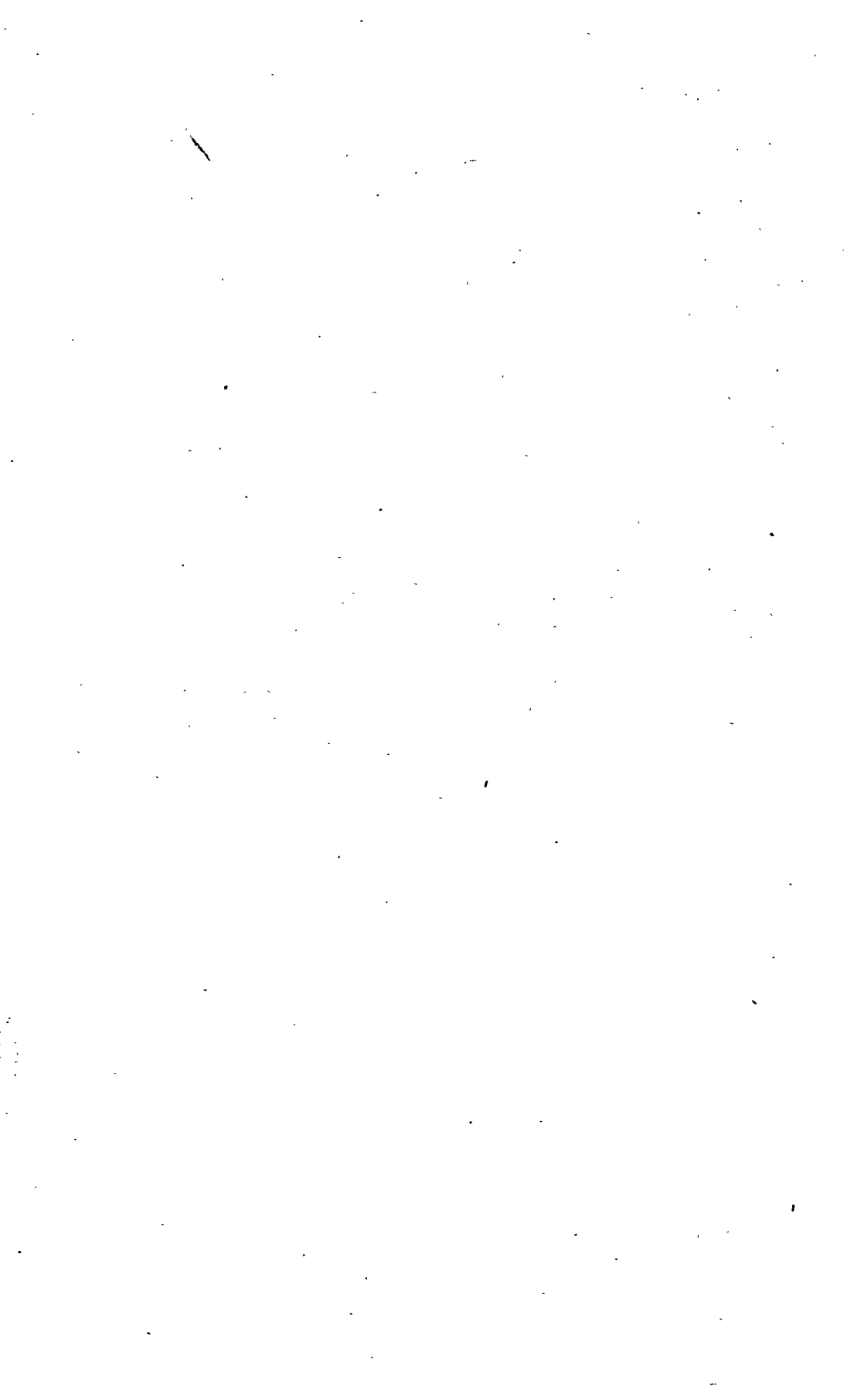
यह निश्चय हुआ कि तीनों में से कोई व्यक्ति किसी प्रकार का अलहदा कारोबार (business) नहीं करेगा ।

मंसूरी 15-7-46 ।

हस्ताक्षर रामकृष्ण

हस्ताक्षर जयदयाल

हस्ताक्षर शान्ति प्रसाद



STAMP OF THE ONE RUPEE AND EIGHT ANNAS

AN AGREEMENT made this 21st day of September, One thousand Nine hundred fifty-two BETWEEN Shri Ram Krishna Dalmia, son of late Seth Harjimal Dalmia, at present residing at 3, Sikandra Road, New Delhi, merchant, of the first part (hereinafter called the 'First Party' which term shall include his heirs, successors, executors, administrators and assigns), Shri Jaidayal Dalmia, son of Late Seth Harjimal Dalmia, at present residing at No. 2, Hardinge Avenue, New Delhi, merchant, of the second part (hereinafter called the 'Second Party', which term shall include his heirs successors, executors, administrators and assigns), and Shri Shanti Prasad Jain, son of late Sahu Diwan Singh Jain, at present residing at No. 9, Alipore Park Place, Calcutta, merchant, of the third part (hereinafter called the 'Third Party', which term shall include his heirs, successors, executors, administrators and assigns), sheweth as hereunder ;

WHEREAS the First Party commenced an carried on business at various places and was responsible for the incorporation of various Joint Stock Companies and later on for acquisition of management otherwise of several Companies, and

WHEREAS the First Party out of love and affection for the Second and Third Parties associated them with the management of the said Companies which continued to be carried on under the guidance of the First Party, and

WHEREAS the parties hereto terminated the said arrangement by mutual consent as from month of June, 1948 and divided the assets between themselves and the parties hereto have since been in complete and exclusive possession and/or control thereof respectively, and

WHEREAS there is no other liability now to be discharged jointly or among the parties hereto each of the others of them except the liability of Income-tax as assessed by the Income-tax Investigation Commission on the parties hereto jointly in the sum of Rs. 1,08,72,812 in or about March. 1951, and

WHEREAS the parties hereto are desirous of entering into this agreement with a view to fully and finally releasing each other among themselves from all or any sort of rights, claims or demands in respect of part or whole of the business developed or carried on in joint association and also to

record their respective shares payable in respect of the aforesaid outstanding tax liability.

In supersession of all previous arrangements or understandings written or verbal, if any, between the parties hereto IT IS NOW HEREBY AGREED AND DECLARED THAT :

I. Each of them, the said Ram Krishna Dalmia, Jaidayal Dalmia and Shanti Prasad Jain, jointly and severally release each of the others of them from all actions, accounts, claims and demands of any nature whatsoever except as described hereinafter.

II. The liability in respect of Income-tax Investigation Commission as aforesaid outstanding in the sum of Rs. 96,52,479 on date is due by the parties hereto so that the parties of the First, Second and Third parts are due to pay the sums of Rs. 48,34,274, Rs. 24,00,002 and Rs. 24,18,203 respectively

III. The Joint Stock Companies' shares charge with the Income-tax Department is security for the discharge of the said tax liability belong to the parties hereto as appearing now in their respective books of account.

IV. The First party will deposit with the Second Party to be held in trust the under noted shares with blank transfer deeds in respect thereof as further security for due payment by the First Party of his share in the aforesaid tax liability :

Shares in Dalmia Dadri Cement Ltd.

Preference Shares	2,400
Ordinary Shares	73,000
Deferred Shares	1,39,000

Shares in The Jaipur Udyog Ltd.

3,00,000 Ordinary shares of Rs. 10 each fully paid.

These above mentioned shares deposited with the Second Party will be released to the First Party progressively as the payments are made by him against his tax liability but so as not to endanger the security of his outstanding liability at any stage.

The First Party will also have the right to keep the aforesaid shares registered in any name he desires as his nominee and may also change it from time to time.

V. Each of the parties agrees to keep each of the others of them indemnified from any claims, losses, damages, expenses, etc., that may have to be suffered by each of them for the default or failure of each of the others of them in respect of the payment of aforesaid income-tax assessed by the Investigation Commission.

VI. The parties hereto shall jointly address a letter to the Commissioner of Income-tax, Patna or the Central Board of Revenue, New Delhi, intimating him of their respective share of the total outstanding liability in the sum of Rs. 96,52,479 and that the said authority shall be requested that in the first instance the failure of payment of the respective share of each of the parties hereto be realised by the Income-tax Department directly from the party hereto in default.

IN WITNESS WHEREOF the parties hereto have hereunto set and subscribe their hands on the day aforesaid at Delhi.

WITNESSES:

FIRST PARTY. Sd/- R. Dalmia

SECOND PARTY. Sd/- J. Dalmia

THIRD PARTY. Sd/- S. P. Jain



INCOME-TAX DEPARTMENT

Central Circle I, Delhi

District

1. Year of assessment 1953-54
2. Name of assessee (with complete address) Seth J. Dalmia, Scindia House, New Delhi.
3. Status Hindu Undivided family
4. Weather—
Resident and ordinarily resident, R. & O.R.
Resident but not ordinarily resident
 Non-resident
5. Method of accounting Mercantile
6. Accounting periods. (To be shown separately for each source of income). y.e. 30-9-52
7. Section and sub-section under which the assessment is made. 23(3)

ASSESSMENT ORDER

A return showing an income of Rs. 45,452 was filed in the status of 'HUF'. Later on a revised return dated 16th September, 1957, was filed showing 'NIL' income, in the status of & 'HUF' while the entire income declared previously was shifted in another return in the status of 'Individual'. A second revised return was filed consequent on a letter dated 10th March, 1958 from M/s. V. Shankar Aiyar & Co., Chartered Accounts, & Authorised Representatives of the assessee in which a loss of Rs. 42,502 was declared after excluding Seth J. Dalmia's remuneration from companies of Rs. 26,400 and Director's fees of Rs. 2,296 and after grossing up the dividends correctly. The tax credit claimed in this return was only Rs. 70,695 as against the original return wherein the figure of Rs. 1,29,953 was shown. These two deductions explain the difference between the figures of income returned in the original return and second revised return. In the letter dated 10th March, 1958 the assessee had taken up the following position about the correct status in respect of his income :—

"After due consideration it is being brought to your notice now that the personal income of the assessee e.g. Remuneration and Director's fees from Companies etc. has to be taxed in his status as an 'Individual' and other income to be taxed in the status of 'HUF'. We request you kindly to make corrections and in the meanwhile revised returns will be filed shortly as the assessee is out of station".

Following this letter the second revised return was filed. In compliance with the statutory notices Shri R. Ganesan of M/s. V. Shankar Aiyar & Co., Chartered Accountants, appeared with Shri Fateh Chand Bhutani, Accountant of the assessee on the several hearings of the case and produced books of account.

The first question that arises in this case is about the status. As per my findings in the assessment order for 1952-53, I have already held the entire income including that now declared in the status of an 'Individual' to be belonging to the 'H.U.F.'. Following the same reasons I will hold for this year also that the entire income as returned in the original return belonged to the H.U.F.

There are several very important and major issues arising in the case of the assessee, partly, as a consequence of the findings given by me in the preceding year's assessment order about the share-holdings held by the assessee's minor sons and daughter-in-law and partly, due to certain new things found out in this year. All these issues are separately dealt with below :—

(1) Firstly, I will deal with the amount of dividends in respect of shares which have been held to be really belonging to the assessee in the preceding assessment order though apparently the shares are held by the six minor sons and daughter-in-law Smt. Lalita Devi Dalmia of Seth J. Dalmia who are declaring this income as their Individual income in their separate Returns of income. The income from such dividends in respect of the shares of M/s. Govan Bros. (Rampur) Ltd. and M/s. Dalmia Agencies Private Ltd., as detailed below, will be added to the income of the assessee in this year also on the basis of my findings and for the reasons advanced in the assessment order of that year :—

(i) *Master Yadu Hari Dalmia*

	Rs.	Rs.
(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	1,000	
(b) Dividend income on 140 O.F.P. shares of Dalmia Agencies Ltd.	350	1,350

(ii) *Master Mridu Hari Dalmia*

(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	1,000	
(b) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	350	1,350

(iii) *Master Jai Hari Dalmia*

(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	1,000	
(b) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	350	1,350

(iv) *Master Ajai Hari Dalmia*

(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	1,000	
(b) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	350	1,350

(v) *Master Nar Hari Dalmia*

(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	1,000	
(b) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	350	1,350

	Rs.	Rs.
(vi) <i>Master Raghu Hari Dalmia</i>		
(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	—	1,000
(vii) <i>Smt. Lalita Devi Dalmia</i>		
(a) Dividend income on 200 ordy. shares of Govan Bros. (Rampur) Ltd.	—	1,000
		<hr/> 8,756

There will be, however, another addition of income from dividends in respect of 120 shares of M/s. Dalmia Agencies Private Ltd. which were purchased with the assessee's funds on 7-6-51 in the name of the minor son of Seth J. Dalmia—Master Raghu Hari Dalmia through his major son—Shri V. H. Dalmia. Income in respect of 20 shares purchased out of the holdings of 720 shares passed on by Seth J. Dalmia indirectly through a circular chain of transfer of shares was already held to be taxable in the hands of the assessee on the basis of collusive nature of the share transactions as narrated in the preceding assessment order and would be so taxable in this year too. This additional income will come up to be taxed in this assessment year for the first time as in the last assessment year these shares were held by Seth V. H. Dalmia (to the extent of 110 shares by original subscription and 10 shares by purchase from two allied concerns of J. Dalmia Group) who sold them on 7-6-51 after earning the dividend declared on 31-5-51. So it is only the income from dividends declared after that date which will be taxed in this assessment year. These shares were purchased by Raghu Hari Dalmia out of a sum of Rs. 14,100 received by him apparently from M/s. Jedia Devi Dalmia Trust, but as I have held in the assessment order for 1952-53 that the Trust was inoperative and bad in law and that the funds which were advanced by it in fact belonged to the assessee, the income in respect of such an investment will also be rightly belonging to the assessee—the apparent holder being a mere *benami* of the real holder. The fact that the shares were held by a member of the HUF makes no difference to the taxability of the income of such shares as long as the funds invested belonged to the H.U.F. On this reasoning the income of Rs. 350 in respect of the entire holding of 140 shares of Dalmia Agencies Private Ltd. standing in the name of Master Raghu Hari Dalmia will be added to the income of the H.U.F.

The dividends from another share transaction, similar in nature to the transaction of shares of M/s. Govan Bros. (Rampur) Ltd. and M/s. Dalmia Agencies Private Ltd., of 6 shares of M/s. Hari Bros. Private Ltd. will arise to be taxed in the hands of the assessee. The facts of this deal of shares are as under :—

(i) Seth J. Dalmia sold 5 (five) shares held by the H.U.F. by original subscription out of the total share capital of 10 shares of M/s. Hari Bros. Private Ltd. for Rs. 100 each on 15-1-51 to M/s. Govan Agencies Ltd., New Delhi—another allied concern of J. Dalmia Group;

(ii) M/s. Govan Agencies Ltd. sold these shares at the rate of Rs. 100 each to Shri V. H. Dalmia on 30-4-51;

(iii) Shri V. H. Dalmia sold these 5, on credit on 9-5-51 to his minor brothers, namely, Master Yadu Hari Dalmia, Master Raghu Hari Dalmia, Master Mridu Hari Dalmia, Master Jai Hari Dalmia and Master Ajai Hari Dalmia;

(iv) On the same date he sold on more share on credit out of the 5 shares originally subscribed by him for Rs. 100 to his sixth minor brother—Master Nar Hari Dalmia.

These shares sold on credit were paid off by six persons after getting a sum of Rs. 14,100 each from M/s. Jedia Devi Dalmia Trust. The transactions of that trust relating to these share deals have, for reasons fully stated in my assessment order for 1952-53, been held to be sham ones. The Trust was never put into funds by the settler as the amount settled on the Trust was neither in existence with Shri J. Dalmia (who was to pay it on account of Smt. Jedia Devi Dalmia) nor as is required in the case of a movable properly transferred to another person were passed on to the Trustees.

This transaction, therefore, is no better than the other two collusive transactions which were manoeuvred in order to convert the HUF income into that of the members of the HUF in the 'Individual' capacities. In this view of the matter, the income from dividends of Rs. 90,000 declared in specie of the six shares of M/s. Hari Bros. Private Ltd. at the rate of Rs. 15,000 per share will be added to the income of the assessee.

In the case of the assessee dividend income has been taken to accrue or arise on the date which is printed on the face of the dividend warrant and the income from this source is declared with reference to such dates. Though the assessee has contested in his ground No. 8 of his appeal memo. for the assessment year 1952-53 before the A.A.C. that he does not declare the dividend income on receipt basis, he has himself communicated this particular method to the Income-tax Officer in his letter dated 29th March, 1956 in the course of assessment year 1951-52. The method of following the printed date given on the dividend warrant cannot amount to the method of accrual of dividend income on the date of Annual General Meeting which declares the dividend. However, acting on the method hitherto followed in the case of the assessee and also advocated by the assessee, income from dividends from M/s. Govan Bros. (Rampur) Ltd. was taxed in the last year. On that very basis the dividend income from M/s. Dalmia Agencies Private Ltd., M/s. Govan Bros. (Rampur) Ltd. and M/s. Hari Bros. Private Ltd. will be taxed in this year—the dates on the printed dividend warrants being 14th August, 1952, 31st January, 1952 and 30th September, 1952 respectively. In my opinion, this basis of taxing the dividend income after the dividend warrant is received is quite fair and can be termed to be dividend income declared on 'receipt basis'—meaning thereby the receipt of the dividend warrant.

(2) The second very important point for consideration in this case relates to a problem which was not hitherto spotted out. The Income-tax Investigation Commission in their report in the case of Dalmia Group had computed their concealed assets in the shape of shares in Limited Companies to be of Rs. 4,19,72,668. In early 1948 the three major persons constituting the Group—Seth R. Dalmia, Seth J. Dalmia and Seth S. P. Jain partitioned their business interests and demarcated their separate spheres of influence. Due to this decision for partition obviously the concealed assets of the Group had also to be divided between them. A separate list of the concealed shares falling to the share of the assessee had been furnished earlier in the course of proceedings for the taxability of appreciation in value of such concealed shares according to the findings of the

Income-tax Investigation Commission. The list showed the following shares coming to the assessee :

Sl. No.	Name of the Co.	Class	& No. of shares	Purchase price and Rate of purchase	Depreciated value	Rate
1. (a)	Bharat Fire and Genl. Ins. Ltd.	OPF	5,270	527,000@100/- each	184,450	35/-
(b)	Do.	OPP	134,380	1,024,647 7/10	67,190	-/8/-
(c)	Do.	Defd.	68,885	77,496 1/2	17,221	-/4/-
2.	Patiala Biscuits Mfg. Co. Ltd.	Ord.	118,342	1,183,420 10/-	236,684	2/-
3. (a)	Kharkhari Coal Co. Ltd.	Pref.	1,650	165,000 100/-	165,000	100/-
(b)	Do.	Ord.	45,000	450,000 10/-	193,000	4.4
(c)	Do.	Defd.	30,000	30,000 1/-	13,200	0.44
4. (a)	Dalmia Cement Ltd.	Defd.	1,83,000	367,200 2/-	91,800	-/8/-
(b)	Do.	Pref. PP.	17,956	897,800 50/-	359,120	20/-
(c)	Do.	OPP.	630,659	2,207,306 3/8/-	197,081	-/5/-
5.	LESCO Chemical Works Ltd.	Ord.	2,000	220,000 11/-	20,000	1/-
6.	Pb. National Bank Ltd.	Ord.	13,747	60,91,585 443/4	1,456,758	106/-
TOTAL				1,32,41,454	30,06,504	

As per terms of settlement with the Commission the three members of the Group were to introduce these shares in their books of account through their capital accounts. The assessee, however, did not carry out that arrangement completely in the matter of introducing the shares into the books through his capital account; but adopted a novel method which could be a source of further concealment of his income. The *modus operandi* of the assessee was to introduce only a part of his concealed shares into the books at the purchase value of the shares (as against the depreciated value determined by the Commissioner in 1951) while the other part was either allowed to remain in the books in his investment account as per a journal entry dated 30th September, 1948 (re-produced in an Annexure) or were shown to be purchased later (as for example, 4750 Ord. Fully paid shares of M/s. Bharat Fire & Genl. Insurance Ltd.). The assessee introduced shares at Sl. No. 1(b), 3(a), (b), (c), 4(c) and 5 worth Rs. 40,96,954 at the purchase price basis in his books of accounts by crediting to the capital account on 30-9-48 and adjusted his capital account which was showing a debit balance previously to be having a credit balance. The Punjab National Bank Ltd. shares (Sl. No. 6) were introduced in the books of accounts in the garb of a purchase from Seth R. Dalmia at their depreciated value of Rs. 14 lacs in the accounting period 1950-51 (assessment year 1952-53) and these shares were sold back for the same price to Seth R. Dalmia during the present accounting period on 31-1-52. The assessee's representative explained this transaction to mean that these concealed shares were never received by the assessee and were allowed to remain with Seth R. Dalmia contrary to the agreement as is exhibited by the list reproduced above.

As regards the rest of the shares, these were, according to the representative of the assessee, held in the books of account in his investment account, as these were shown to have been purchased (excepting 4,750 OFP shares of M/s. Bharat Fire and Genl. Insurance Ltd.) on 30-9-48. It is to be remembered that this purchase of shares on 30-9-48 was made in the books of account prior to the Income-tax Investigation Commission had discovered the concealed assets of the Dalmia Group and the journal entry was made by the assessee in the course of the manipulation of transactions in books of account in order to conceal its assets. By not transferring the value of such concealed shares to the capital account and retaining them as such the assessee continued to maintain the camouflage of not owning these shares and enjoyed the benefit of carrying the corresponding liabilities in respect of shares purchased through investment account. In order to derive this advantage for reducing his income, the assessee hit upon this device of not transferring the value of these shares to the credit of his capital account. The assessee's representative, first of all, and later the assessee himself by my letter dated 21st March, 1958 were asked to give a complete list of concealed shares which fell to his share and the dates when these were introduced in his books of account and also to explain the position of re-valuation of shares which he had done through his capital account in the present accounting period. The assessee by his letter dated 26th March, 1958 very much fretted and fumed about his being asked this question in each assessment year and brushed this point aside by saying that this position had been explained earlier to my several predecessors-in-office and that I should refer to the old records. Apart from the fact that this was hardly a proper reply to the query the riddle about the non-introduction of the rest of the shares through the capital account remained as it was. This point was discussed also with Shri Ganesan, representative of the assessee, in detail on 25th March, 1958, and as per order sheet entries he was asked to explain this point; but he also did not tender any oral explanation on 26th March, 1958 and instead requested for further time. The whole issue was within the knowledge of the assessee and it is rather strange that having deliberately not passed entries crediting the value of concealed shares to his capital account, the assessee's representative should now come forward with a request for further time. This could mean only one thing that despite knowing every thing it was not in the interest of the assessee to disclose it at this stage and I had to fall back on my own resources to work out the full repercussions of this method adopted by the assessee in the present accounting period. One thing was apparent that by not adjusting the value of concealed shares in the capital account and retaining the transactions in the investment account the assessee was carrying forward certain bogus liabilities in respect of shares in fact belonging to himself and by so doing he was claiming interest on such liabilities. The deduction of such interest payments, therefore, reduces his taxable income. As the assessee was introducing these shares at values other than the depreciated value taken by the Commission, this could always affect the quantum of his liabilities which mostly meant keeping the figure of liabilities as high as he possibly could. I, therefore, had to trace back the treatment which he accorded to his own shares not brought into his capital account. Almost all these shares, which were held in the investment account on the strength of liabilities other than that of the capital a/c of the assessee, appear to have been disposed of in earlier years and were repurchased in the account-

ing period 1950-51 (relevant to assessment year 1952-53). Full facts of these shares are given below :—

Name of the shares	Purchase price of the shares as per I.T.I.C.	Dep. value of the shares as per I.T.I.C.	Value of shares repurchased by the assessee in '50-51 accounting period	Name of the party from whom purchased
(i) Dalmia Cement Ltd. Pref. PP. 17,956	8,97,800	3,59,120	*4,35,000	M/s. Hari Bros. (Private) Ltd. *This price was paid for 18,000 shares in which these 17,956 shares were included. The proportionate cost of these shares will be Rs. 4,33,936.
(ii) -do- Defd. 183,600	3,67,200	91,800	2,44,000	M/s. Rampur Investment Co. Ltd.
(iii) Bharat Fire & Gen. Ins. Ltd. OFP. 5,270	5,27,000	1,84,450	2,16,450	(a) Dalmia Cement Ltd. (4,750 shares) for Rs. 1,90,000. (b) Dalmia Jain Trust 520 shares for Rs. 26,450.
(iv) -do- Defd. 68,885	77,496	17,221	71,385	(a) M/s. Rampur Investment Co. Ltd. 66,000 shares for Rs. 66,000. (b) M/s. Hari Bros. Private Ltd. 2,885 shares for Rs. 5,385.
(v) Patiala Biscuits Mfg. Co. Ltd. OFP. 118,342	11,83,420	2,36,684	3,26,711	(a) M/s. Dalmia Jain Agencies Ltd. 3,342 shares for Rs. 9,190. (b) Govan Agencies Ltd. 65,000 shares for Rs. 1,78,750. (c) Rampur Investment Co. Ltd. 150,000 shares for Rs. 4,14,844.
TOTAL			12,92,482	

The assessee purchased 2,18,342 Ordry. fully-paid shares for Rs. 6,02,784, out of this proportionate cost of 1,18,342 shares is worked out on average cost basis.

This chart will give an idea that on purchase price basis and depreciated value basis of the Income-tax Investigation Commission the assessee has under-stated his capital account to the extent of Rs. 30,52,916 and Rs. 8,89,275 respectively and to that extent has overstated his liabilities. But as the assessee has not been debiting either of these values for the purpose of purchasing or repurchasing these shares, none of these values can be a guide to the amount of exact under-statement of the capital—the

quantum of such understatement depending on the value placed on the concealed shares. However, the re-purchase price for these shares stands, according to the above chart, at a figure of Rs. 12,92,482. Assuming that the value of shares cannot be more than the depreciated value adopted by the Income-tax Investigation Commission in 1951 (and this fact is amply borne out as the assessee himself has revalued these shares through his capital account on the basis of depreciated values as taken by the I.T.I.C.), the assessee has purchased these investments at a price of Rs. 12,92,482 as against Rs. 8,89,275. This over-payment of the price has been possible only because the purchases were made entirely from the concerns who were in J. Dalmia Group. In these circumstances, the over-statement of the liabilities will be taken at the figure of Rs. 12,92,482 and interest at the rate of 6% on this amount (*viz.*, Rs. 77,549) will be disallowed to the assessee for the whole of the account year—the investments having been purchased in the proceeding accounting period. Penalty proceedings under section 28 will be started in respect of this bogus inflation of expenditure.

(3) Another important thing that happened in this year was in relation to the settlement of a contracted deal of shares of the assessee with M/s. Bharat Nidhi Ltd. The assessee took delivery of 29,500 shares of LESCO Chemical Works Ltd., 975 ordy. and 3,650 Pref. shares of M/s. Bharat Fire & General Insurance Ltd. in the accounting year and later on disposed of these very shares or shares taken in exchange claiming a loss of Rs. 3,63,725 on the deal. In addition, in his interest a/c he has claimed interest payment of Rs. 28,636 for the period 1-1-1951 to 24-3-1952 at the rate of 6 per cent per annum. Full inquiries in respect of this contracted deal of shares were made in order to determine the genuineness of the deal and as to whether it was carried out in a normal commercial manner and in the course of share dealing business was alleged on behalf of the assessee.

According to the previous history of the case the assessee has not been treated as a share-dealer so far and his income is computed under section 12 as against section 10 in the capacity of an investor upto now. Even in appeals before the AAC the assessee has not seriously contested this point. Even the question of allowance of interest paid to M/s. Bharat Bank Ltd. in respect of this deal has been decided against the assessee in the assessment years 1949-50 and 1950-51 on the following grounds as mentioned in the assessment order for 1949-50 :—

“A liability must first accrue and be adjusted before it can be considered. There was no delivery of shares during the account year and hence no purchase of these shares. Non-delivery by Bank of shares shows that purchase transaction was completed only when consideration was paid to the Bank. In my view interest is not allowable under such circumstances.”

(extract from the assessment order for 1949-50).

Apart from these agreements, a study of the complete history of this transaction reveals this to be a transaction of extraordinary nature which cannot be taken to be a normal share dealing as alleged by the assessee. Under two letters dated 5th February, 1948 the assessee agreed to purchase 975 ordy. and 3,650 preference shares of M/s. Bharat Fire and General Insurance Ltd. and 39,500 ordy. shares of LESCO Chemical Works Ltd., at the rates determined on that date of Rs. 101, Rs. 112 and Rs. 11 per share

respectively. The delivery of the shares could be postponed till 31st March, 1951 under the conditions specified in those letters. The delivery of these shares in fact was not taken even up to 31st March, 1951 and was taken between the period 26-3-1952 to 20-8-1952. M/s. Bharat Bank Ltd. had an option to sell these shares at the expense of the assessee after 31-3-1951; but it did not exercise it. *Prima facie* such a long drawn out deal did not appear to be a deal which is usually put through in case of genuine dealings of this type. The assessee was thereupon asked as to what considerations prompted him to purchase these shares and to prove the purchase and sale price paid and received in respect of these shares by suitable evidence, e.g., market quotations or balance sheets of the companies concerned. In reply the assessee merely voiced his grievance about having explained all these matters in detail to my predecessors who had accepted this and as usual invited my attention to earlier files. Nothing whatsoever was stated about the assessee choosing to enter into this sort of deal and footing a substantial interest bill at the rate of 6% for failure to take delivery of shares after 31-3-1948 (as provided in the terms of the agreement) nor did the assessee's representatives produce any evidence in support of the purchase price stipulated in the agreement with M/s. Bharat Bank Ltd. dated 5-2-1948 despite specific opportunities given as mentioned in the order sheet. Similarly no evidence about the sale price of the shares in 1952 was produced excepting a balance sheet as on 31st December, 1951 of M/s. LESCO Chemical Works Ltd., Rampur. The disinclination to produce such evidence and silence about the driving motive for entering into the deal show that these transactions remain unverified about their true nature. If these were genuine commercial transactions such evidence would have been forthcoming. The balance sheet filed of LESCO Chemical Works Ltd., Rampur, as on 31st December, 1951, clearly shows that the company had almost all its assets situated in Pakistan and the balance sheet showed the value of such assets in Pakistan at Rs. 5 (Furniture Re. 1, Electric fittings Re. 1, Water supply and Installation Re. 1, Gas plant Re. 1, Due from Lahore Office Re. 1). The very fact that the country had been partitioned and the assets of the concern had fallen in Pakistan would indicate that these shares could not be a good buy in February 1948 and not in any case to be worth the rate of Rs. 11 per share.

I have made enquiries about this transaction also in the case of M/s. Bharat Nidhi Ltd. and it was discovered that it entered into three contracted deals of similar nature of Rs. 61,97,265 with three members of Dalmia Group on 5-2-1948. The deal in respect of the assessee was valued at Rs. 9,41,775. The companies whose shares were dealt with were entirely under the control of the Dalmias and were their close preserves. Two of these companies which contributed to the bulk of these contracted deals were situated in Pakistan.

These facts to some extent throw some light as to why these transactions were at all entered into with M/s. Bharat Bank Ltd., who was also a Public Ltd. Company of Dalmia Group. It appears that Dalmias made Bharat Bank Ltd. to invest to the extent of over Rs. 61 lacs in the shares of either the companies which came to be situated in Pakistan or companies which were either private limited ones or outwardly public limited; but in reality under the complete control of Dalmias. In fact, two of these companies—Dalmia Investment Co. Ltd. and Dalmia Cement and Paper Marketing Co.

Ltd. were the close preserves of Dalmias. These investments apparently did not amount to sound and prudent investments made with an eye to the security and yield by any bunker. In order to counteract the effect of this unwise and insecure investments and to contribute to the soundness of the Bank the Dalmias perhaps came forward to offer a cushion. Apparently such a transaction cannot be taken as a normal commercial deal entered into the course of share dealing business as alleged.

From another score too this transaction cannot be supported to be a commercial one in the course of share dealing business. Looking into the names of the companies the shares of which were contracted by each of the three persons—Seth R. Dalmia, Seth J. Dalmia and Mrs. Rama Jain, wife of Shri Shanti Prasad Jain, it emerges that the shares contracted by each one of the persons almost related to the companies which fell in the sphere of influence of each of the three persons constituting Dalmia Group before its partition in early 1948. Apart from the consideration of maintaining the financial soundness of Bharat Bank Ltd., the three deals appear to have been so devised as to pass on the shares of the companies falling into the control of each member to him. The deal, therefore, appears to have been entered in the course of a partition of interests between the three members of the Group and the prices that were agreed upon were not the real market prices; but the inflated ones. In this view of the matter too the deal was entered by the assessee only in order to obtain the shares of the company falling within his control and not in the course of share dealing business. The prices stipulated were artificial ones and further go to substantiate the non-commercial nature of the deal. In this connection it will be interesting to invite attention to the depreciated prices which the Commission put in respect of these shares. These were Rs. 35 for Ord. F.P. shares of Bharat Fire and General Insurance Ltd. and Re. 1 per share for the shares of LESCO Chemical Works Ltd.

In view of the above discussion, neither the interest payment of Rs. 28,636 to M/s. Bharat Nidhi Ltd. can be treated as a valid allowance nor the loss claim of Rs. 3,63,725 in respect of M/s. LESCO Chemical Works Ltd. shares and Bharat Fire and General Insurance Ltd. shares. About Bharat Fire and General Insurance Ltd. shares the loss has been shown to have been incurred not directly on 475 Ord. F.P. shares; but in respect of 100 O.P.P. shares of Rs. 25 each and 6,000 O.P.P. shares of Rs. 7/8 each. This loss has been merely transferred from the ordinary shares to the ordy. partly-paid shares of two types. As per investment chart the assessee sold 475 ordy. F.P. shares on 8-4-1952 at the rate of Rs. 100 per share to Dalmia Jain Trust—another entity under the control of J. Dalmia Group and Dalmia Jain Trust paid the price in the shape of 100 ordy. partly-paid shares of Rs. 25 each and 6,000 ordy. P.P. shares of Rs. 7/8 each. This in fact meant an exchange deal and Shri Ganesan explained it to be for the purpose of gaining more voting power. The loss was incurred when these very shares purchased from Dalmia Jain Trust for Rs. 25 and Rs. 7/8 were sold on 13-9-1952 at the rate of Re. -/8/- each for both types. The Commission had already in 1951 determined the depreciated value of ordinary fully-paid shares at Rs. 35 per share and As. 8 for ordy. partly-paid shares. It beats me completely as to how the assessee could claim this loss to be genuine when he had sold the ordinary shares at the rate of Rs. 100 per share on 8-4-1952 to Dalmia Jain Trust and similarly purchased P.P.

shares at the rate of Rs. 25 and Rs. 7/8 per share, i.e., at the face value of these shares. The transaction is obviously a non-commercial one entered into between the assessee and another entity of J. Dalmia Group at manipulated rates. This loss, therefore, cannot be allowed as a valid deduction even in the case of share-dealing business as alleged. Similarly the loss of Rs. 34,500 and Rs. 2,95,000 in respect of 500 ordy. F.P. shares of Bharat Fire and General Insurance Ltd. and Lesco Chemical Works Ltd. cannot be allowed as the deal cannot be termed to be a genuine commercial deal and the loss cannot be held to have been sustained in a commercial deal.

(4) In addition the assessee has been deriving a benefit from two of its concerns—M/s. Dalmia Cement (Bharat) Ltd. and M/s. Hari Bros. Private Ltd. who jointly provided their residence No. 2 Hardinge Avenue, New Delhi, free of any expense whatsoever. M/s. Hari Bros. Private Ltd. who were the Managing Agents of M/s. Dalmia Cement (Bharat) Ltd. had rented the first floor of the building which was owned by M/s. Dalmia Cement (Bharat) Ltd. for Rs. 4,200 per year and made it over to two of its Directors—Seth J. Dalmia and Seth V. H. Dalmia. Similarly M/s. Dalmia Cement (Bharat) Ltd. had kept the ground floor in its own use under the guise of maintaining a branch office there. The necessity to maintain a branch office by M/s. Dalmia Cement (Bharat) Ltd. could not be made out for several reasons.

Firstly, the company had its control office in Scindia House for which it is charging separate expenditure and there did not appear to be any need for a separate branch office under the nose of the Directors.

Secondly, it was noticed that the branch office only looked after the business of Investments made by the company. For the assessment year 1953-54 of Dalmia Cement (Bharat) Ltd. in all about 75 vouchers related to this business of the branch. This throws enough light on the quantum of business handled by it and hardly could justify the opening of a branch for this purpose.

Thirdly, the enquiries made by my Inspector, reveal that even that business of making out those vouchers and writing out books of investment business was in fact done at Scindia House, viz., the control office premises.

In these circumstances, it is obvious that M/s. Dalmia Cement (Bharat) Ltd. was providing the ground floor of the building indirectly to the Directors in the garb of maintaining a branch office.

M/s. Hari Bros. Private Ltd. have stated—the position about the first floor which they had rented at the annual rent of Rs. 4,200 plus 50% of the annual electricity and water charges paid by M/s. Dalmia Cement (Bharat) Ltd. on account of their Directors and members staying in that portion. These charges are not recouped by them in consideration of—

- (a) their looking after and entertaining the guests of the managed companies at their own expense;
- (b) their attending to normal official work of the managed companies on holidays and before and after the usual office hours.

of the managed companies according to the exigencies of the work.

The reasons advanced do not appear to be at all convincing as in respect of the first the company could grant an entertainment allowance if genuinely there were a large number of guests to be entertained by the Directors on behalf of the company, and in respect of the second, there cannot be such a heavy rush of work that the Directors would not have attended to it but for their having been provided a free residence. It may also be pointed out that M/s. Hari Bros. (P) Ltd. passed a resolution, dated 7th July, 1952 which reads as follows :—

“As the Government have not approved the grant of free furnished accommodation to the Managing agents and the annual rental value of No. 2, Hardinge Avenue Bungalow being Rs. 8,400 less 10% and of the guest house attache being Rs. 1,425 less 10% as intimated *vide* letter No. 3384/TS, dated 30th April, 1952, of the New Delhi Municipal Committee addressed to Shri Jai Dayal Dalmia Resolved that a fixed annual rental of Rs. 4,200 be paid by the company to Messrs. Dalmia Cement (Bharat) Ltd., for the portion of the building used for the purposes of the company. Further Resolved that 50% of the electricity and water charges bills be also paid by the company to Messrs. Dalmia Cement (Bharat) Ltd.”

This shows clearly that the Government was averse to providing the free furnished accommodation which the company was too anxious to give to the Directors. It may also be pointed out that in the premises of 2, Hardinge Avenue a separate guest house was also located. In these circumstances, it will become apparent that both the companies were too anxious to provide rent free furnished accommodation free of electricity and water charges to J. Dalmia and V. Dalmia who are both members of this H.U.F. and thus met an obligation of theirs which but for such payment would have been payable by them. This amounts to a constructive receipt in the hands of the assessee. The rental of the building as per municipal valuation comes to Rs. 8,400. The arrangement of sharing expenditure equally between M/s. Dalmia Cement (Bharat) Ltd. and M/s. Hari Bros. (P) Ltd. came into being only for 9 months in this year while prior to this for a period for 3 months the entire expenditure in respect of water and electricity charges taken out from M/s. Dalmia Cement Ltd. and M/s. Dalmia Cement (Bharat) Ltd. for the whole year amounted to Rs. 1,066 and Rs. 1,753 respectively. Allocating 1/3rd of this expenditure to the guest house, the balance was incurred on behalf of the Directors. The building also appears to have been furnished at the expense of the companies concerned as some items of expenditure of furnishing were debited in the account of M/s. Dalmia Cement (Bharat) Ltd. The value of such furnishings is estimated at Rs. 200 p.m. The total value of such benefits, therefore, in this year will be—

	Rs.
Rental	8,400
Water & Electricity Charges	1,879
Free furniture used	2,400
	<hr/>
	12,679

The total income of the assessee is computed as under :—

Other Sources :	Rs.	Rs.
Loss as per Profit & Loss account	1,12,013	
<i>Add :</i>		
Dividends dealt with separately	3,65,105	
	<u>4,77,118</u>	
<i>Deduct :</i>		
(i) Interest paid claimed Rs. 1,13,983.		
Out of this the two disallowances as discussed above are :—		
(a) Rs. 77,549		
(b) Rs. 28,636 paid to Bharat Nidhi Ltd.		
In addition, interest will be disallowed on a sum of Rs. 78,000 paid on account of Income-tax Investigation Commission demands during this year on 31-5-52 after borrowing from M/s. Ashoka Marketing Ltd. The expenditure thus incurred is of a personal nature and interest at the rate of 6% from 31st March to 7th July, '52 viz., Rs. 877 will be disallowed in regard to this.—Total disallowance being :	1,07,062	
(ii) Insurance premia	1,672	
This is in respect of risks of personal nature occasioned by travel etc. on the life of Seth J. Dalmia. The expenditure is a personal one and will be disallowed.		
(iii) Domestic expenses obviously disallowable	25,340	
Loss on sale of investments as discussed above	3,63,725	
(iv) Share transfer expenses claimed Rs. 181 :		
The expenses being of a capital nature in the hands of an investor are disallowed	181	
(v) Dividends		
(a) Net Rs. 3,55,104 GROSS : as per details in the Annexure.	4,49,563	
Tax deducted at source Rs. 84,458/12		
(b) Dividends income added as discussed above. (This will be taken as net).		
	Rs.	
(1)	8,750	
(2)	350	
(3)	90,000	
	99,100	
(vi) Income from rent free accommodation as discussed above	12,679	10,59,822
	<u>TOTAL INCOME</u>	<u>5,82,704</u>

Issue penalty notices under Sec. 28 in respect of dividend in compered of minor sons and daughter-in-law of J. Dalmia, interest disallowance due to under-statement of Capital A/c. Bharat Nidhi Contracted Deals shares loss and interest payment and income from rent free accommodation and Sec. 18A(9) with Sec. 28 and also charge penal interest under Sec. 18A(6) for assessee's default under Sec. 18A(2).

Assessed under Sec. 23(3). Issue notice of demand and challan.

Sd/-

(P. K. MEHTA)

Income-tax Officer,

CENTRAL CIRCLE I.

DELHI.

Dt. 28-3-58

Seth J. Dalmia
Assessment Year

H.U.F.
1953-54

ANNEXURE TO THE ASSESSMENT ORDER

Debit Investment

Dalmia Cement Ltd. Ord. F.P. shares 82,605 shares @ Rs. 10 p.s. × Div. Plus transfer stamps Rs. 286/8/-.	8,26,336	8	0
Dalmia Cement Ltd. Deferred shares 195,600 shares @ Re. 1 p.s.	1,83,600	0	0
Dalmia Cement Ltd. Pref. P.P. shares 17,956 shares @ Rs. 25 p.s. × Div.	4,48,900	0	0
Patiala Biscuit Mfrs. Ltd. shares 218,342 shares @ Rs. 2/8/- p.s.	5,45,855	0	0
Bharat Fire & General Insurance Ltd. Ord. shares 520 shares @ Rs. 50 p.s. F.P.	26,000	0	0
National Safe Deposit & Cold Storage Ltd. 20,000 shares @ Re. -/8/- per share.	81,250	0	0
Bharat Fire & General Ins. Ltd. Defd. shares 68,885 shares @ Re. 1 p.s.	68,885	0	0
Rohtas Industries Ltd. Ord. shares 133,000 shares @ Rs. 50 per share.	10,64,000	0	0
Dalmia Investment Co. Ltd. Pref. shares 11,300 shares @ Rs. 50 per share.	5,65,000	0	0
Dalmia Investment Co. Ltd., Ord. shares 214,010 shares @ Rs. 2 per share plus Transfer stamps Rs. 1,980.	4,30,000	0	0
	42,39,826	8	0

Debit Seth R. Dalmia

Dalmia Jain & Co. (Jind) Ltd. shares 3,500 @ Rs. 10 per share.	35,000	0	0
Dadri Marketing Ltd. shares 1,260 @ Rs. 10 per share.	12,600	0	0
Dalmia Cement & Paper Marketing Co. Ltd. Deferred shares—350,000 shares @ Re. -/4/- per share.	87,500	0	0
Dalmia Dadri Cement Ltd. Deferred shares 119,300 shares @ Re. -/8/- per share.	59,650	0	0
Rajputana Investment Ltd. Deferred shares 120,000 shares @ Re. -/8/- per share.	60,000	0	0
Dalmia Cement and Paper Marketing Co. Ltd. Preference shares.			
4,600 shares @ Rs. 50 per share and Transfer stamps Rs. 1,650.	2,31,650	0	0
	51,24,826	0	0

Credit Investment :

Dalmia Cement Ltd. Ord. P.P. shares 301,579 shares @ Rs. 3/8/- per share × Div.	10,54,826	8	0
Govan Bros. Ltd. Pref. shares 10,000 shares @ Rs. 80 p.s. × Div.	8,00,000	0	0
Govan Bros. Ltd. Ord. shares 10,000 shares @ Rs. 327 p.s.	32,70,000	0	0
	51,24,826	0	0

Being former investment purchased in account of self and for Mr. R. Dalmia in exchange
of latter investment sold.

DIVIDEND ANNEXURE

Shri J. Dalmia

Assessment year 1953-54.

Name of the Company	Name of regd. share holder.	Date of declaration	Percentage	Amount	Remarks
(1)	(2)	(3)	(4)	(5)	(6)
1. Digvijay Cement Co. Ltd.	J. Dalmia	22-7-52		25	It is not to be grossed as the profits out of which the dividend was said to have been appropriated were not subjected to tax.
2. Bharat Fire & Gen. Ins.	Shriyans Pd.	28-4-52		750	The shares in respect of which this dividend has been declared to be not regd. in the name of the assessee.
3. Do.	Rajinder Km.	Do.		750	Do.
4. Associated Cement Companies Ltd.	J. Dalmia	25-1-52	89.24%	48 8 0	
5. Travancore Cement Ltd.	Do.	27-3-52		30 0 0	
6. Andhra Cement Co. Ltd.	Do.	31-5-52	100%	5 0 0	
7. Sone Valley Cement Co. Ltd.	Do.	6-6-52	100%	10 6 0	
8. Bharat Fire & Gen. Ins. Ltd.	Do.	28-4-52	100%	46,593 2 0	
9. Kharkhari Coal Co. Ltd.	Do.	5-12-51	100%	9,900 0 0	
10. Dalmia Cement Ltd.	Do.	22-12-51		40,425 0 0	However, it is found out from the asstt. records of M/s. Dalmia Cement Ltd.
11. Do.	Do.	Do.		468 12 0	

DIVIDEND ANNEXURE—*contd.*

(1)	(2)	(3)	(4)	(5)	(6)
12. Dalmia Cement Ltd.	J. Dalmia	22-12-51		1,00,853 5 6	that the dividends in question were declared by the Company out of the profits for the period ended 31-12-51 and as such the percentages of taxed and untaxed profits works out to 77.4% (including 11% 15-C) and 22.6% in respect of India & Pakistan in dividends will, therefore, be given credit at the afore-said percentages.
13. Do.	Do.	30-9-51		1,65,245 10 0	
				36,51,103 11 0	
SUMMARY :—					
			Net	Gross	At source
(i)			47 8 0	62	14 0 0
(ii)			56,508 8 0	76,621	20,112 8 0
(iii)			3,06,992 11 6	371,325*	64,332 4 6
To be taken as net :			1,555 0 0	1,555	—
			3,65,103 1 6	449,563	84,458 12 6

*This includes Rs.*40,846 to be taken only for rate purposes.

VOLUME III

Part 1

**ALLENBERRY AND D. J. AIRWAYS
PRE-JOINT VENTURE PERIOD**

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CHAPTER 1

INTRODUCTORY

The affairs of Allenberry, Dalmia Jain Airways and Dalmia Jain Aviation were largely interlinked, so we will deal with them as a set.

CHAPTER II

ALLENBERRY : ACQUISITION AND CONTROL

We will first examine the control of Allenberry.

Allenberry & Co. is a very old company which was in existence from before 1924. Originally it belonged to an English firm, Thomson & Thomas Williams. It was converted into a private limited company on 7-2-25. In or about April 1945 the control passed into the hands of the D. J. Group. At that time the company had substantial assets and reserves and was conducting a flourishing business.

The control was initially acquired by the D. J. Group and then in gradual stages it became an R. Dalmia concern by 27-3-50.

The original directors had no connection with the D. J. Group. They resigned between 31-3-45 and 3-4-45 and were succeeded by the following persons : Shanti Prasad Jain, V. H. Dalmia, H. D. Bishnoi and R. Bajoria.

Shanti Prasad Jain was a member of the D. J. Group and is a son-in-law of R. Dalmia.

V. H. Dalmia is a son of J. Dalmia and a nephew of R. Dalmia. When he was appointed director, V. H. Dalmia was only 21 years old and it is evident from his evidence that he had not much experience and had very little independent say in the business.

H. D. Bishnoi and R. Bajoria were paid employees of one or other of the D. J. Group concerns.

It is evident from this that Shanti Prasad Jain was the man in direct control from April 1945 though V. H. Dalmia was nominally the managing director; but it is also clear from the evidence of V. H. Dalmia, Shanti Prasad Jain and others that though R. Dalmia was not connected with this company as a director, he was consulted about its affairs and had a pre-dominant voice in the management.

Therefore, so far as the directorate is concerned, Shanti Prasad Jain had all the influence and directly wielded all the authority; and in the background were J. Dalmia and R. Dalmia. In other words, in the directorate section the control of the Dalmia Jain Group was absolute in April 1945.

It is, however, fair to say that J. Dalmia had very little direct concern with the running and management of Allenberry. There is evidence to indicate that he was a technician and that generally speaking, his concern with the companies under the control of the D. J. Group was mainly on the technical side.

An analysis of the registered shareholdings also reveals that the shareholdings control by the D. J. Group in 1946 was about 78 per cent. The total issued shares were 40,000. On 15-4-45 it was decided at a shareholders' meeting to shift the registered office of the company from Calcutta to Dalmianagar in Bihar. This is significant because Dalmianagar was

the home of the Dalmias. At the same time it was decided to increase the share capital of the company from Rs. 7 lacs to Rs. 5 crores. V. H. Dalmia was appointed managing director at that meeting.

These important decisions were reached at a shareholders' meeting; but the records reveal that only six shareholders were present in person and seven by proxy. The Chairman of the meeting was the 21 year old V. H. Dalmia and all 12 were interested in the D. J. Group (Ex. 253).

When the share capital was increased, each shareholder was given a bonus of 3 shares. These shares were issued on 28-2-46. That had the effect of quadrupling each shareholder's holding but made no difference to the ratio of control. The total issued share capital thus rose from 40,000 shares to 1,60,000 shares.

The shareholding control of the D. J. Group, increased to 81.1 per cent on 1-9-46 and continued at that figure till 27-3-50. The figures are not exact.

Between 27-3-50 and 10-1-52 the entire 1,60,000 shares were acquired by two trusts, the Yogiraj Charity Trust and the Bhriguraj Charity Trust. (Exs. 459 and 457). These two trusts were created by R. Dalmia. He was not only the founder trustee, but under the respective trust deeds, the absolute control of these trusts vested in him. (Exs. 454 and 455). Therefore, from 27-3-50 onwards, R. Dalmia had 100 per cent of the shareholdings control of Allenberry through these two trusts.

Shanti Prasad Jain, who had the real control of the directors between 3-4-45 and 4-12-48, was replaced by his nephew, Shital Prasad Jain on 9-12-48; and Shital Prasad Jain continued as director from 9-12-48 to 26-4-51. Shanti Prasad Jain's case is that he ceased to take part or interest in the management after 31-5-48. But as he was on the Board of Directors down to 4-12-48 it is evident from the composition of the Board that he was in a position to exercise effective control even if he did not attend meetings.

The youthful V. H. Dalmia continued from 3-5-45 to 3-11-47 and another relation, Raizada Brij Mohan Lal, was a director from 20-6-47 to 10-3-52.

Brij Mohan Lal was also young. He was only 23 in 1947 and had married R. Dalmia's sister's daughter. He told us that he was a "nominee director" and succinctly summarised his duties in these words,

"My duty as a nominee director was that whenever I was invited to a meeting I used to attend the meeting. . . . No question of voting ever arose at any of the Directors' meetings. . . . They used to pass resolutions. There were no discussions. We were told that these are the resolutions that will be typed later on and incorporated in the minutes. We were never asked our opinions about the resolutions and never asked whether we agreed with them or not."

Brij Mohan Lal also told us that he carried out the directions of, first, Shanti Prasad Jain, then Shital Prasad Jain and then R. Sharma.

Shital Prasad Jain was incharge of the accounts at Dalmianagar. P. S. Patke, who was R. Dalmia's secretary, told us that Shital Prasad was

concerned with the appointment of directors of the various companies belonging to the D. J. Group.

Another of Allenberry's directors was Raizada Man Mohan Lal. He was there from 17-3-51 to 26-12-51. He is a brother of Raizada Brij Mohan Lal and, according to the evidence of Brij Mohan, he had about as much knowledge of, and say in, matters relating to Allenberry as Brij Mohan.

Then there was G. Ramachandran, also a director, from 25-2-52 to 23-4-52. He was the Private Secretary of R. Dalmia. He started on a salary of Rs. 150 a month and rose to Rs. 265 a month. He was also a director of other Dalmia concerns namely, D.C.P.M., D. J. Aviation, later called Asia Udyog and Edward Keventors. He called himself a "benamidar director" in the witness box. Later, when D.C.P.M. went into liquidation, he was its voluntary liquidator. When asked about his duties as a director he replied,

"I was merely R. Dalmia's secretary and I never applied my mind to all these details. Whenever papers came to me I used to show them to R. Dalmia and if he said that I could sign them I used to sign them. If he said, don't sign them I would never have signed them. I did what R. Dalmia told me. I never differed from what he told me."

J. M. Gupta was another director. He was an employee and frankly described himself as a dummy. He acted from 13-2-46 to 1-12-47.

The remaining persons who acted as Directors from time to time are Kunj Beharilal Chordia (R. Dalmia's brother-in-law), R. Sharma, Rameshwar Prasad Mittal and D. A. Patel. All were employees of one or other of the Dalmia concerns. D. A. Patel also figures as the voluntary liquidator of the following companies :

- (1) D.C.P.M., (2) Vastra Vyavasaya, (3) Jaipur Agencies, (4) Dadri Marketing, (5) C. Lazarus & Co., (6) Rashtriya Agencies, (7) Jaipur Traders, (8) Pepsu Trading, (9) Vishwa Industries, (10) Premier Trading Corporation, (11) Rajasthan Udyog, (12) Dalmia Jain & Co. (Jind State), (13) Govan Bros. Private Ltd.

Thus the control of the D. J. Group and later of R. Dalmia, over Allenberry and Co. from 1945 was complete.



CHAPTER III

D. J. AIRWAYS : FORMATION

Turning next to D. J. Airways, we find that at first this company was completely controlled by the D. J. Group and later by R. Dalmia. It was floated as a public limited company and the main object of the floatation was to draw money away from the public company and drain it into Allenberry. We will establish that as we go along. The history of its formation is as follows :

After the conclusion of hostilities in the second World War, the Government of the United States of America had a large stock of surplus vehicles and stores in India. In order to wind up its affairs here it wanted to dispose of this stock at an early date; and for that reason it was prepared to sell the stock at bargain prices; also, it wanted a buyer who would take the lot at once.

The Dalmia Jain Group was anxious to get these goods and corner the market because motor vehicles and stores were not easily available in those days though the demand for them was great. But the Director General of Disposals wanted over Rs. 5½ crores for them and wanted to close the deal at an early date. The D. J. Group's private concern Allenberry was not in a position to raise all the money itself nor could it raise money from the public because it was a private limited company, and, in any event, that would have defeated the purpose that the D. J. Group had in view. They, therefore, devised the method of floating a public limited company and getting the necessary funds from the public. But at no time was there any intention of letting the public share in the benefits of this bargain or of giving it a return on its investment.

This is strongly disputed by Shanti Prasad Jain and J. Dalmia. They say that D. J. Airways was formed to run an aviation business and that the idea of taking it on as a financing partner of Allenberry in respect of the Disposal goods business arose at a later stage. They also said that, except for the last Rs. 50 lacs, Allenberry could have financed the entire deal of Rs. 242 lacs without the assistance of D. J. Airways; and that, as the decision to buy the last instalment of disposal goods was made after the formation of the partnership, it is wrong to say that Allenberry had the intention to take on D. J. Airways as a financing partner from the start.

But the following description of the sequence of events is significant. V. H. Dalmia told us in the witness box that during the war Allenberry handled U. S. Army Aviation Department contracts for the servicing and conditioning of their vehicles, so Allenberry's officials had many opportunities of coming into contact with the U.S. Army authorities, Allenberry thus learnt that after the war the U.S. Army would leave a large number of spare parts and vehicles for disposal in India. Allenberry also realised that new vehicles and stores would not reach this country for a long time after the conclusion of hostilities. Therefore,

"Allenberry were looking for an opportunity to buy some of the Army disposal vehicles."

V. H. Dalmia goes on to say that some time in April or May 1946 Allenberry's General Manager, S. N. Verma, and some other officers of the company were told to make a survey of the U.S. Army vehicles, most of which were concentrated at the Moran Depot in Assam.

It is evident from this that the information that a large stock of vehicles and stores would be left by the U.S. Army for sale in India was obtained by the D. J. Group before the war ended, and, as we shall see later, Shanti Prasad Jain also admitted this. The plan to buy them took shape in April or May 1946 at the latest.

Discussions then ensued between Shanti Prasad Jain and R. Dalmia as a result of which V. H. Dalmia directed the General Manager of Allenberry to discuss the financial implications of the deal with Allenberry's bankers. About the same time S. N. Verma and Williamson went to Delhi and discussed the matter with R. Dalmia and Shanti Prasad Jain.

As a result of these consultations Shanti Prasad Jain and J. M. Gupta (then one of Allenberry's directors) had an interview with the Director General of Disposals; and V. H. Dalmia told us that

"The D. G. Disposals gave our representative to understand that if Allenberry were willing to buy *the entire lot* he would give them preference over other buyers. It was estimated that the entire deal would entail an expenditure of roughly Rs. 5 crores."

This occasioned a further consultation with Allenberry's bankers, and V. H. Dalmia tells what happened. He says that

"So far as the bigger deal was concerned, it was realised that Allenberry would not be able to finance it from its own resources. . . . We could easily have raised over one and a half crores by arrangement with our bankers. We could not have gone in for the entire lot without raising another Rs. 4 crores."

He is fully corroborated by Shanti Prasad Jain. He said in his written statement.

"It is thus obvious that though Allenberry & Co. Ltd., had the organisation and technical staff necessary for the purpose of carrying out this transaction, *it did not have adequate resources for the purposes of financing* the whole of the transaction while Dalmia Jain Airways could have raised resources from the public."

In any case, there can be no doubt about this because a glance at Allenberry's balance sheet as on 30-6-46 (Ex. 84) reveals that the total assets of Allenberry at the time amounted to only Rs. 1,35,63,928-7-3 and the cash in the bank was only Rs. 87,111-11-9, while its liabilities were Rs. 1,12,06,208.

V. H. Dalmia explains the next step thus,

"When we realised that this was the position we suggested to our colleagues in Delhi that unless they could find out some means of raising this Rs. 4 crores for Allenberry the deal would either fall through or they must take somebody else as a financing

partner. Then Shanti Prasad Jain and R. K. Dalmia explored possibilities of taking in D. J. Airways as the financing partner."

It is true that D. J. Airways was in existence when the surplus vehicles were bought. The application for permission to float the company was made on 3-5-46 (Ex. 77). But V. H. Dalmia said that the information that these goods would be for sale was obtained before the end of the war and that the plan to purchase them was formulated in April or May 1946.

He is corroborated by the fact that two officers of Allenberry namely, S. N. Verma, the General Manager, and Williamson, the Sales Manager, were sent to inspect the disposal vehicles lying at the Moran Depot. S. N. Verma made a statement to that effect before the Arbitrators. As the inspection must have taken some time and as the decision to have an inspection made must have been reached even earlier, it is evident that the decision to buy the goods must have been reached well before 3-5-46, the date on which the application for permission to float the company was made to the Examiner of Capital Issues. (Ex. 77).

The matter is clinched by V. H. Dalmia's statement to the effect that Allenberry could have raised about Rs. 1½ crores but not the remaining Rs. 4 crores and so, unless the *entire* Rs. 5½ crores was raised the *entire deal* would fall through *unless a financing partner was obtained*. This is also proved by Shanti Prasad Jain's letter Ex. 99, dated 12-7-46. Therefore the decision to take on a financing partner clearly preceded the decision to purchase the entire Rs. 5½ crores worth of goods as that constituted the "entire deal".

This is strongly contested by Shanti Prasad Jain and J. Dalmia. In argument, Mr. K. C. Jain threw V. H. Dalmia overboard though he also appeared for V. H. Dalmia, and said that he was only a boy of 21 with little education, so what could he have known about all this? He said that V. H. Dalmia was anxious to show off in the witness box and to parade his own importance. Counsel argued, who will believe that a boy like him would know about these things even though he was the managing director of Allenberry. He relied instead on the evidence of Shanti Prasad Jain and S. N. Verma.

Shanti Prasad Jain admitted in his written Statement in D. J. Airways, that Allenberry serviced and conditioned U.S. Army vehicles during the war and that they learned *during the war* that

"after the war came to an end the U.S. Army would leave in India a large number of vehicles and spare parts for surplus disposal. It was felt that it would take considerable time after the cessation of the war before sufficient new vehicles arrived in the Indian market to meet the demand and that if the said vehicles and spare parts could be purchased by Allenberry & Co. Ltd. such transactions would be very profitable."

This corroborates V. H. Dalmia where he tells us that the idea of buying up these vehicles at the end of the war arose even before the war ended.

We will now turn to the spare parts. According to Shanti Prasad Jain the first they heard of the spare parts and the R3A Plant was on the

morning of the 11th. But this is not what he said in his written statement. He said there, speaking of the knowledge of the D. J. Group about the U.S. Army surpluses, that the knowledge was acquired *during the war*.

The passage that we have quoted above relates to the spare parts as well and it was obviously culled from the following passage in V. H. Dalmia's evidence :

"They learned that after the war came to an end the U.S. Army would leave in India a large number of Army vehicles and *spare parts*."

V. H. Dalmia also told us that the financial implications of the *entire* deal was considered and not merely of the first Rs. 242 lacs. We will repeat what we have already quoted earlier from his evidence :

"We could easily have raised over one and a half crores worth with our bankers. We could not have gone in for the *entire* lot without raising another 4 crores. *When we realised that this was the position* we suggested to our colleagues at Delhi that unless they could find out some means of raising the 4 crores the deal would either fall through or *they must take on somebody as a financing partner*."

In view of that, and in view of Shanti Prasad Jains' written statement, we disbelieve the story given by Shanti Prasad Jain and S. N. Verma in their evidence that the existence of the spare parts came as a surprise on the morning of the 11th. In our opinion the entire deal was considered as a whole, and the financing partner that they wanted was in respect of the entire Rs. 5½ crores and not merely for the extra Rs. 50 lacs worth of goods that is said to have been suddenly and unexpectedly offered to them on the morning of the 11th.

We will turn next to the evidence about the reasons for the floatation of D. J. Airways. The Commission said in its statement of matters that the company was formed for the purpose of running two kinds of business,

- (1) Aviation business; and
- (2) disposal vehicles and stores business.

This assertion as denied by Shanti Prasad Jain in his written statement. He said,

"It is denied that D. J. Airways was floated to do two kinds of business....it was floated....for the purpose of carrying on aviation business alone."

This denial of Shanti Prasad Jain is disproved by the evidence of R. Dalmia given an oath before the District Judge of Delhi on 11-10-52 (Ex. 845). He said,

"It is not correct that D. J. Airways was floated solely for the purpose of running an air company. The company had *other objects* as mentioned in its Memorandum of Association.

As this happens to accord with the fact that the company did run two kinds of business and that the second started within two months of its incorporation, we see no reason why we should not accept this evidence, especially as R. Dalmia is the one who is more likely to know the truth than anyone

else. That therefore proves that the intention, *even before incorporation*, was that D. J. Airways should run more than one kind of business.

Now the only other business it ran, aside from aviation, was the business of disposal vehicles and stores. It follows that this business was the other kind of business in contemplation at the date of the floatation. In any event, there is no evidence of even a suggestion, to show that there was any kind of business other than the disposal business in view. We are, therefore, justified in concluding that the disposal vehicles and spare parts business was in contemplation for this company *even before it was floated*; and that one of the object for which it was floated was to do this kind of business. On this evidence we are of opinion that,

- (1) that D. J. Group knew of the existence of the disposal vehicles and stores before the war ended, that is to say, before the floatation of D. J. Airways;
- (2) that they knew then that the U.S. Army intended to dispose of this surplus stock at cheap rates after the end of the war;
- (3) that the D. J. Group conceived the idea of buying up this surplus stock after the end of the war;
- (4) that after the war they took steps to implement that idea; and
- (5) to that end they
 - (a) sent Allenberry's officers to inspect the vehicles, draw up a list of them and make a rough estimate of their value; and
 - (b) they applied to the Controller of Capital Issues for sanction for the issue of capital of Rs. 40 lacs on 3-5-46.

We will now turn to the evidence about the inspection by the officers of Allenberry. We have seen that V. H. Dalmia told us that S. N. Verma and some other officers of Allenberry were sent to make a survey of these vehicles some time in April or May 1946. S. N. Verma (W. 50) contradicts this. His story is that he and another officer of Allenberry, Williamson, stumbled on these vehicles *by accident* while on a visit to Allenberry's branch at Dibrugarh. He also said that the idea of buying the vehicles arose at *his* level and not at that of R. Dalmia and Shanti Prasad Jain; also that he, Verma, thought, "sometime in the latter part of May," that it would be a good idea for Allenberry to buy them. He, therefore, contacted R. Dalmia (who was then at Mussoorie) on the telephone and suggested to him that they buy the vehicles.

Shanti Prasad Jain said that the first he heard about these vehicles was at Mussoorie when S. N. Verma came there at the instance of R. Dalmia. But V. H. Dalmia told us that he, V. H. Dalmia, informed Shanti Prasad Jain about this earlier. The sequence of events given by him is this :—

1. S. N. Verma and other officers were sent to inspect the vehicles in April or May 1946;
2. S. N. Verma then submitted a report to him, V. H. Dalmia;
3. V. H. Dalmia and his colleagues in Calcutta then made a reference to their Chairman, Shanti Prasad Jain;
4. Shanti Prasad Jain asked him, V. H. Dalmia, to send S. N. Verma and others to Delhi for detailed discussions with the D. G. Disposals, and Shanti Prasad Jain also went to Delhi;

5. At Delhi they discussed the matter between themselves and R. Dalmia.

Shanti Prasad Jain's story does not fit in with that of V. H. Dalmia.

We have therefore to choose between the versions of V. H. Dalmia and S. N. Verma on this point. In view of what Shanti Prasad Jain said in his written statement about the knowledge of Allenberry regarding the existence of these vehicles and about their idea (formed before the war) that it would be a good thing to buy them up after the conclusion of the war, we think that V. H. Dalmia's story sounds the more probable of the two. If V. H. Dalmia and the General Manager knew, then it is very unlikely that R. Dalmia and Shanti Prasad Jain would have been kept in the dark.

Another pointer to the truth of V. H. Dalmia's version is that S. N. Verma admitted that he and Williamson were at first refused permission to inspect the vehicles. He said that they had to go to a place called Panitola to obtain the necessary permission from the Controller of the Unit. This persistence, especially in the middle of the hot weather, is more consistent with action taken in pursuance of definite orders to go there and inspect the vehicles than with a desire to satisfy a passing curiosity; especially as they took the trouble to make a list and draw up a statement.

In view of all this we believe V. H. Dalmia on this point and disbelieve S. N. Verma when he says that he came across the vehicles by accident and that he was not sent there to inspect them. We also disbelieve Shanti Prasad Jain when he says that the first he came to know about the existence of the vehicles was when he met S. N. Verma in Mussoorie in July 1946.

The next point is about the date of the inspection.

S. N. Verma said that he and Williamson inspected the vehicles at Moran in May 1946. He did not say when.

V. H. Dalmia had already told us that the inspection was "sometime in April or May 1946". Despite this, Verma contended himself with saying that the inspection was in May. Mr. Shah then said,

"You told us that you inspected these vehicles *at the end of May 1946.*"

Now, the witness had not said that, and Mr. Shah, without waiting for an answer, went on and asked him,

"What did you do thereafter?"

The answer of the witness was confined to the latter part of the question.

Now whether the witness's statement was deliberate or not we have little doubt that the inspection preceded the floatation of D. J. Airways. We know that they were thinking of buying up the vehicles before the war ended. We know from the following assertion in Shanti Prasad Jain's written statement that the D. J. Group was anxious to corner the market. He said;

"The D.G. Disposals had represented.....that besides the said disposal vehicles there were no other disposal vehicles in the Indian market.....So if Allenberry & Co. purchased the said disposal vehicles Allenberry would have a *monopoly* for such vehicles in the Indian market."

Then he said that they found later that there were other vehicles for sale and said that if they were sold to others the D. J. Group "would not have the monopoly for such vehicles."

We also know from R. Dalmia that the D. J. Group had other business for D. J. Airways in mind before they floated it. For the reasons given earlier, that other business could only have been this business of disposal vehicles. It is unlikely that they would have gone ahead with the floatation without first getting an idea of the size and value of the undertaking on which they were thinking of embarking. Therefore, we think the inspection must have preceded the floatation; and even if it was made on the 1st or 2nd of May as a final check, that would still be before 3-5-46, the date of the application to the Examiner of Capital Issues. Therefore, it is reasonable to conclude that the idea of getting money from the public for financing the deal was conceived before the floatation.

We will now pass on to the next point, namely, whether Allenberry was in a position to pay for the vehicles. Here again, V. H. Dalmia was thrown overboard.

We will take S. N. Verma as a starting point. He says that after he and Williamson had inspected the vehicles at the end of May 1946 he told R. Dalmia, who was then at Mussoorie, about their discovery and suggested that Allenberry should buy up the stock. R. Dalmia told him to come to Mussoorie so he and Williamson both went there on the 2nd or 3rd of July 1948 and met R. Dalmia and Shanti Prasad Jain there.

In his evidence, Shanti Prasad Jain said that the first time he learnt about these vehicles was in July, 1946 when S. N. Verma and Williamson came to visit them at Mussoorie. We do not believe him in view of V. H. Dalmia's statement to the contrary.

We have already drawn attention to S. N. Verma's statement that the whole idea originated at his level at the end of May 1946. But he said that before he went to Mussoorie he took the precaution of consulting Mr. Parker, the General Manager of the Eastern Branch of Lloyds Bank about the possibility of an advance for this purchase; and he said that Parker assured him that the bank would be willing to advance Allenberry money on the security of the vehicles and that it would treat them as new for the purpose. Parker, however, said that he was not able to give any particular assurance at that time.

The upshot of the discussions at Mussoorie was that S. N. Verma was told to go ahead with the deal and enter into negotiations with the Director General of Disposals.

S. N. Verma says that he thereupon went to see the D. G. Disposals and obtained a rough idea about the price from him. Then, soon after 2-7-46, he went to see Parker and Watts of Lloyds Bank and obtained an assurance from them that the bank would be willing to finance the deal. Armed with this information he returned to Mussoorie.

Shanti Prasad Jain said that the second meeting at Mussoorie was in the first week in July. The upshot of the meeting was that S. N. Verma and he should go to Delhi and close the deal with the D. G. Disposals. They therefore went and saw the Director General on the 9th of July.

Shanti Prasad Jain said that he thought that deal would cost them about Rs. 200 lakhs (actually it was settled for Rs. 180 lakhs). But, he says that when he got there he was offered some more vehicles and that that brought the total offer up to Rs. 230 lakhs plus a sum that had yet to be negotiated for 200 auto-cars and white tractors. Shanti Prasad accepted the offer and signed an agreement on behalf of Allenberry (Ex. 82). He said that there was no idea of associating D. J. Airways with the deal at that time and so he signed on behalf of Allenberry alone.

The price of the auto-cars and white tractors was not settled on the 10th. That was done the next day. The bill (Ex. 89) came to Rs. 62 lakhs, which, with the Rs. 180 lakhs in Ex. 82, brought the total up to Rs. 242 lakhs. Shanti Prasad Jain said that all this took place on the morning of the 11th. There was no intention to bring D. J. Airways into the picture at that stage as Allenberry was in a position to raise about Rs. 250 lakhs and so could have gone ahead with the deal. Anyway, that was the position up to the morning of the 11th.

To carry on with the story. Shanti Prasad Jain said that while they were settling the Rs. 242 lakhs deal on the morning of the 11th, the D. G. Disposals told him that some spare parts and an R3A Plant were also for sale and that this would cost about Rs. 50 lakhs more. Shanti Prasad Jain said that he had already exceeded his estimate of Rs. 200 lakhs when he agreed to purchase of Rs. 242 lakhs, and as he did not know whether Allenberry would be able to finance the extra Rs. 50 lakhs he asked the D. G. Disposals for time till the afternoon of the 11th to make up his mind.

S. N. Verma and Williamson were called in for a consultation after lunch and they pressed for the extra purchase and said that it would be very much to the advantage of Allenberry. S. N. Verma also brought some papers with him showing the financial position of the company and said that,

"it will be possible to arrange additional margin that will be required for this additional deal by the company's bankers."

This suggestion was overruled and Shanti Prasad Jain told us that it was decided that,

"we should not entirely depend on the resources of Allenberry and the additional deal should be done only if we can find a suitable partner for the deal."

They had no difficulty in finding the partner they wanted. D. J. Airways was waiting on the doorstep. Shanti Prasad Jain says that a meeting of the Board of Directors of D. J. Airways was held after these discussions and it was

"decided in principle that D. J. Airways should be prepared to go ahead with Allenberry as partners if permission was granted to raise further capital."

Shanti Prasad Jain said that the directors present at that meeting were (1) J. M. Gupta, (2) R. K. Jain, and (3) himself.

S. N. Verma carried the story forward. He said that

"we called on the D. G. Disposals in the afternoon and Mr. Shanti Prasad Jain mentioned that it was their intention to take into partnership D. J. Airways provided they were able to obtain permission from the Controller of Capital Issues."

This presented no difficulty. The Director General of Disposals simply lifted his telephone and explained the whole matter to the Examiner of Capital Issues over the phone and then and there obtained an assurance that the permission would be forthcoming. On receipt of this assurance Shanti Prasad Jain went ahead with the deal and accepted the additional offer. The sale bills, Exs. 87 and 89, were thereupon drawn up in the names of Allenberry and D. J. Airways jointly.

Shanti Prasad Jain insisted that he did not commit D. J. Airways to this purchase and said that simply because the D. G. Disposals chose to put down D. J. Airways as a joint purchaser that did not bind D. J. Airways; and he said

"Why should I object to anything where somebody makes a commitment? I do not bother what the other fellow does. He is committing, Sir, that he will assist me to obtain necessary permission from the Examiner of Capital Issues."

There can be no doubt that this committed D. J. Airways to the purchase so far as Shanti Prasad Jain was concerned, provided he had the necessary authority to act on behalf of D. J. Airways. If he is to be believed, he obtained the authority from the meeting of the Board of Directors an hour or so earlier. D. J. Airways was added as a purchaser by the D. G. Disposals because of what Shanti Prasad Jain said. Acceptance of an offer of this kind does not have to be in writing, so, apart from what Shanti Prasad Jain said to the Director General his conduct alone would have constituted an acceptance. We have no doubt that Shanti Prasad Jain committed D. J. Airways to the joint purchase of the Rs. 242 lakhs and that that was his intention.

Having got this background we will now examine in more detail whether Allenberry was in a position to finance the deal of even the Rs. 242 lakhs.

It is clear from the reasons that we will give later that Allenberry was not in a position to finance this deal of Rs. 242 lakhs from its own funds; nor does anyone pretend that it was. The story is that the money could have been raised from the banks.

In his written statement Shanti Prasad Jain said that the money could have been raised from their banks "particularly Llyod's Bank Ltd."

He made an application on 12-11-61 asking the Commission to issue a questionnaire to one J. Wood who was in England. The application was refused on 23-11-61. The Commission said,

"Shanti Prasad Jain said in his written statement that the persons whom he wanted to examine about this from Lloyd's Bank is dead and so now Shanti Prasad Jain wants to prove that Allenberry could have raised the money from the *Allahabad Bank* and that J. Wood will be able to do this."

We rejected the application and said,

"This is too theoretical to be of any value. The point could easily be established by showing the state of Allenberry's financial position and that of Shanti Prasad Jain or any other member of the D. J. Group and their bank accounts and securities. All that is a matter of record and can be proved by documents. Assuming that Wood

were to say that his bank would have lent Allenberry Rs. 4½ crores in 1946 if they had asked for it : The evidence of a man who is no longer connected with the Allahabad Bank and who is prepared to say that his bank would have given a loan of that size for which it was never asked, fifteen years ago, would be of no value.

As regards the practice mentioned in the statement of 12-11-61 and about the banking conditions. That can be proved by other bankers if relevant."

No attempt was made to call anyone from either the Allahabad Bank or from Llyod's Bank who were in India and who were now with the Banks; nor was any attempt made to produce the banking accounts of either Allenberry or any member of the D. J. Group. Surely anybody now in these banks could have told us about the practice and the policy of their banks in those days. This attempt to make a dead man the sole depository of this knowledge about the practice in Llyod's Bank, and another who is well out of reach in the case of the Allahabad Bank, and whose evidence could not have been of value in any event, is a transparent device to cloud the real issue.

S. N. Verma (W. 50) said that Allenberry's accounts were with Lloyd's Bank and not with the Allahabad Bank, and he said that his only conversation was with these two persons from Lloyd's Bank. When we examined him more closely he had to admit that the talk about these loans was very general. For instance, he was asked what talk they had about the margin, and he said,

"We suggested that they would advance us moneys on the same margin as new vehicles."

Q. Irrespective of the condition of the vehicles?

A. There was *no talk about the condition* of the vehicles.

Then he was asked,

"Was there any talk about the margin? What was it?

He said,

"They said they would want a high margin. *It was not specified* but our *impression* was that they were talking of 15% to 20%."

This in itself reveals that there was no assurance from the bank. Can anyone believe that a man who is asking for a loan would not even trouble to ask what margin the bank would want and would leave that to guess work and imagination; and can one seriously be asked to believe that a responsible bank official would give an assurance without even mentioning the margin required and without even inquiring about the condition of the vehicles? All the vehicles were not in good condition. We know that a large number required reconditioning and that they were divided into three categories, saleable, unsaleable and scrap. Can anyone believe that the bank agreed to treat them *all* as new, especially when everyone knows that war surpluses are not always in good condition.

In any event, we cannot accept this story. Normally, a loan of Rs. 200 odd crores would require sanction from higher authority; but even if it did not it is impossible to believe that a responsible bank official would give

a bland assurance of this kind without any verification about the state of the vehicles, without any mention of the figure for margin and without even glancing at Allenberry's balance sheets.

The utmost that S. N. Verma (W. 50) was prepared to say was,

"Mr. Parker agreed that the bank would be willing to treat these purchases in the same way as if it were a purchase of new vehicles. *But beyond this he would not give us any particular assurance at that time.*"

Verma was made to look through these balance sheets and when he was pressed about margin, he had to admit that Allenberry could not have raised enough money for the margin even on his own optimistic view. He admitted that there would still be a balance that would have to be taken care of. So he was asked,

"And the balance?"

He replied,

"For the balance *probably* some other arrangement *would be* made by Mr. Shanti Prasad Jain or Mr. Dalmia."

Even this was not discussed at Mussoorie but was left in the air. In any event we know that no arrangement was made.

And when it came to a matter of proof. Aside from these flights of fancy on the part of S. N. Verma and Shanti Prasad Jain, what was there? We were referred to a dead man and to a man whom they knew it would not be practicable to examine.

We are clear that the money was not there and that this is another of their fairy tales; and a bad one at that.

If further proof is wanted it will be found in Shanti Prasad Jain's letter (Ex. 99), dated 12-7-1946 to the Examiner of Capital Issues. He said,

"This transaction represents a purchase of second hand vehicles to the tune of 20,000 and the sale of which will have to be effected after their overhauling, reconditioning and repainting. The completion of this big transaction will involve much amounting to Rs. 1 crore further outlay and will take several years *too long to be financed by loans from banks.*"

We will now examine this in greater detail from the point of view of the banks that are said to have been willing to advance the loans.

According to Shanti Prasad Jain. negotiations for acquiring disposal vehicles were started by Williamson & Verma in June, 1946; but as the deal was very large, they requested him (Shanti Prasad Jain) to see the Director General of Disposals (DGD), which he did on 9th July, 1946 on return from Mussoorie.

This was the very day on which Dalmia Jain Airways (DJA) was incorporated, *vide* Certificate of Incorporation (Ex. 88). On 10th July, 1946, the Memorandum of Agreement with the DGD was signed on behalf of Allenberry and Shanti Prasad Jain has stated that when the Memorandum was signed, there was no proposal of any kind to associate DJA with the deal, and, therefore, it was signed for and on behalf of Allenberry only.

When Shanti Prasad Jain was asked whether Allenberry was in a position to pay for the purchases, he stated that when the matter was discussed at Mussoorie, there was a discussion also regarding finances for the deal. Verma reported to Shanti Prasad Jain that he had discussed this matter with Bankers and they had agreed tentatively to advance the moneys in the same way as in the case of the Company's own goods, but subject to a larger margin. This, Shanti Prasad Jain said, was indicated by Verma to be about Rs. 40,00,000 on a deal of approximately Rs. 2,00,00,000 which was under contemplation in the first instance.

Shanti Prasad Jain then stated that when he attended the office of the DGD on 11th July, 1946, he came to know that they could offer Stores also as well as the R-3A Plant, and that he was advised very strongly by the officers of Allenberry that this purchase was very desirable. According to him, therefore, it was a serious matter as he was not prepared for a commitment beyond approximately Rs. 2,00,00,000 and the matter required consideration. The DGD was, therefore, asked for some time for the matter to be considered. He then stated that he went to consult R. Dalmia, and the officers of Allenberry strongly suggested that the deals be entered into. Verma, as Shanti Prasad Jain stated, apparently had brought "some statements" with him to show the financial position of Allenberry; but, at the same time, it was felt that Allenberry's finances should not be strained further. It was at this stage, therefore, that it was decided that Allenberry would go through with the deal if a suitable partner was found and it was felt that since DJA had a successful floatation, and if it could raise more money, then DJA would be a suitable partner.

All this is supposed to have happened in the twinkling of an eye on 11th July, 1946. A Board meeting of DJA is said to have been held on the same day, at which, according to Shanti Prasad Jain, he was authorised to go ahead with the deal, provided the permission was obtained from the Examiner of Capital Issues to raise additional funds in DJA. Therefore, in the afternoon of 11th July, 1946, Shanti Prasad Jain went again to the DGD and informed him that they would go ahead with the deal provided DJA could obtain the permission to raise more funds. This apparently was assured by Sir Allan Lloyd, and the two sale notes (Exs. 87 and 89/90) for Rs. 1,80,00,000 and Rs. 91,32,500 were signed on 12th July, 1946 on behalf of both Allenberry and DJA.

To recapitulate the events on 11th July, 1946,—

- (a) Shanti Prasad Jain went to the DGD in the morning to finalise the deal of approximately Rs. 2,00,00,000 on behalf of, as he said, Allenberry only;
- (b) the DGD offered spares and the R-3A Plant, thereby increasing the investment;
- (c) the officials of Allenberry supported the increased deal, for which Shanti Prasad Jain said that he wanted time to consider;
- (d) All of them went to R. Dalmia where Verma is supposed to have produced "some statements";
- (e) Allenberry decided to take in a financing partner and Shanti Prasad Jain hit upon DJA;

- (f) A Board meeting of DJA was allegedly held to consider its participation, and at which it was agreed to participate provided it could raise more money, and finally,
- (g) Shanti Prasad Jain went to the DGD with this offer in the afternoon and finalised it on behalf of both Allenberry and DJA.
As the expression goes "sufficient for the day is the evil thereof", and as far as DJA was concerned, it certainly was an "evil day."

According to this arrangement, Allenberry was supposed to be the working partner and DJA the financing partner, and on the same day, as the sale notes were obtained, viz., 12th July, an application was made to the Examiner of Capital Issues (Ex. 98), seeking his permission for an issue of capital amounting to Rs. 3,10,00,000 for DJA.

The story, therefore is that—

- (a) up to the morning of 11th July, Allenberry was to go in for the deal by itself; but that on that day, when the commitment increased, Shanti Prasad Jain suddenly thought of associating a financing partner, and he thought of DJA;
- (b) the Board meeting of DJA was held immediately on the same day after the first meeting with the DGD in the morning;
- (c) on the same day in the afternoon, he went back to the DGD and stated that DJA would be the participant, if permission were given to raise further capital;
- (d) on 12th July, the sale notes (Ex. 87 and 89/90) were obtained in the joint names of Allenberry and DJA; and
- (e) on that very day, viz., 12th July, an application was made to the Examiner of Capital Issues for an issue by DJA of capital to the extent of Rs. 3,10,00,000.

The speed with which all this took place within three days from the incorporation of DJA on 9th July, 1946 is remarkable, and more so, when it is realised that until lunch time on 11th July, 1946, there was no question, according to Shanti Prasad Jain, of associating anyone with the deal. Let alone DJA.

Verma (W. 50) was questioned as to whether finances could have been raised, as he had reported to Shanti Prasad Jain, by Allenberry from the banks, and questions were put to him by Mr. C. C. Shah for Shanti Prasad Jain, Verma's answers were as follows :—

Q. "At the time when you made this purchase or at any time before that had you made any efforts to find out whether the company will be in a position to make this purchase on its own effort ?

A. Before proceeding to Delhi and after obtaining Mr. Dalmia's view on the telephone, I met Mr. Parker who was then the General Manager of Eastern Branches of the Lloyds Banks Ltd. as well as Mr. Watt who was the Manager of the Branch at which the company had their account with the said Bank and enquired from them whether Lloyds Bank would be willing to advance moneys to the company on the security of vehicles that they proposed to purchase from the

Disposal Department. Mr. Parker agreed that the Bank would be willing to treat these purchases in the same way as if it were a purchase of new vehicles. But beyond this he could not give us any particular assurance at that time. Subsequently, when Mr. Williamson went back to Mussoorie after the 2nd of July, I returned to Calcutta and had further conversations with Mr. Parker and Mr. Watt. I conveyed to them an approximate idea of the prices that we might have to pay as well as the number of vehicles that the company proposed to purchase. I took with him Mr. Pillay the Secretary of the company and he assisted us in explaining to Mr. Parker the financial position of the company at that time. Mr. Parker felt that the Bank would be willing to advance moneys enough to finance this purchase on the same basis as they usually did for Allenberry & Co. Ltd. for the purchases of new vehicles.

Q. Did you convey this to Mr. R. Dalmia and Shri S. P. Jain.

A. Yes. On my return when Shanti Prasad Jain returned to Delhi I informed him of the conversations that we had with Mr. Parker in Calcutta.

Q. You were therefore assured at the time of making this purchase that this company was in a position to make this purchase from its own resources or from borrowing from the Bank?

A. I was quite confident at the time when these purchases were made that Allenberry Co. Ltd. would be able to find money enough either from their own resources or by borrowing money from their Bankers."

Cross-examined by Mr. Petigara, the witness gave the following answers to the questions put to him.

Q. Will you tell us, I am talking about your discussion with the bankers, Mr. Parker, what advances were they making to you at that time, to what extent and with what margin?

A. Please show me the balance sheets (Witness was shown balance sheets of December 1945 and December 1946).

Mr. Petigara—There was an amount secured on hypothecation (ref : balance sheet as on 30th June 1946) of Rs. 23 lakhs 33 thousand rupees.

A. That is correct, Sir.

Q. And the stock-in-trade was valued at Rs. 81,84,000? I do not know, as I said, I am asking you what were the conditions of margin at that time—margin against hypothecation?

A. It would be different in respect of different goods. It would be about 10% on vehicles.

Q. And on others?

A. On spare parts perhaps it would be about 30%. These are the only two items in which Allenberry were mostly interested.

Q. Which was your Bank?

A. Lloyds Bank.

Q. I presume that those vehicles were new vehicles in your show-rooms?

A. Yes, imported.

- Q. Did Mr. Parker give you to understand that you would get the same terms in respect of the vehicles at Makum ?
- A. We asked for that. The indication was that they would ask for higher margin.
- Q. Would that margin also differ regarding the condition of the vehicle-saleable, unsaleable or scrap ?
- A. There is no question of saleable or unsaleable at that time. We told them that USA forces had thrown up surpluses which the Liquidation Commission had passed on to the Government of India, and we were proposing to purchase the same in bulk from the Government of India and that would the bank consider a loan on the total layout and they said, yes.
- Q. Was there any talk about the margin at all ?
- A. Yes, Sir. We suggested that they would advance us moneys on the same margin as on new vehicles.
- Q. Irrespective of the condition of the vehicles ?
- A. There was no talk about the condition of vehicles.
- Q. Did you give Mr. Parker to understand that there may be vehicles which are damaged or unserviceable or incomplete ?
- A. No, Sir. There was no talk about the condition of vehicles.
- Q. Was there any talk about the margin ? What was the talk ?
- A. They said that they would want a higher margin. It was not specified, but our impression was that they were talking about 15% to 20%.
- Q. And you had sufficient margin to cover any advance made by the Bank ?
- A. Yes, Sir.
- Q. What was the margin ?
- A. Our stock-in-trade was Rs. 81 lakhs, against which we had loan of 26 lakhs. And there is a reserve which was invested with our bankers, most probably, in London, and which amounted to quite a large sum of money.
- Q. So you thought that they would be sufficient ?
- A. To some extent it would take care of.
- Q. And the balance ?
- A. For the balance probably some other arrangement would be made by Mr. Shanti Prasad Jain or Mr. Dalmia."

Shanti Prasad Jain stated before us that the arrangements for raising finances were discussed with one Mr. Wood of the Allahabad Bank Ltd., whereas Verma spoke of negotiations with one Mr. Parker of the Lloyds Bank. Be that as it may, it is difficult to believe that in a deal of this kind, a bank would have advanced the money, and if it had, that it would have kept a margin of only 10%. We should, therefore, consider the factors which would weigh with a banker when he makes an advance against goods

of this type. A banker would take the following considerations into account :—

- (a) The nature of the security offered for the advances;
- (b) The liquidity factor attached to the goods deposited against the advances; and
- (c) Whether the goods would be in the custody of the bank or whether they would be in the custody of the borrower.

On the first two factors would largely depend his decision whether he would give the loan at all, and on the last factor would depend the extent of the margin he would keep against the goods to be pledged or hypothecated. In the present case, the vehicles and spare parts were spread over various depots in outlying places, and it is obvious that the bank would have no control over their disposition, and when disposed of, over the sale proceeds. It would be another thing if the Bank had custody of the goods, but in this case, such a thing was not possible. Even with the Bank putting its own staff at the various depots, it would not have been possible to have effective control over the goods. Nevertheless, assuming that a Bank had the custody of the goods and control over the proceeds flowing from the disposition of the goods, no Bank would have lent moneys other than at a margin of 30%. If control did not exist over the goods, then in a case of this nature, the very minimum margin the Bank would have required would have been not less than 50%; but taking the most favourable view and assuming that the Bank which was allegedly approached was willing to advance even at a margin of 40%, let us see whether the financial position of Allenberry was such as would enable it to produce a margin of 40% on the original commitment of Rs. 2,00,00,000 and which would have been in the neighbourhood of Rs. 80,00,000.

An analysis of the financial position of Allenberry as per its Balance Sheet as at 30th June, 1946 discloses the following position :—

Fixed Assets :

Buildings	3,09,091
Machinery & Plant	3,05,595
Tools	2,950
Furniture & Fittings	32,940
Motor & Vehicles	22,752
Carried Forward ..	6,73,328
Brought Forward ..	Rs. 6,73,328

Work-in-Progress :

Stocks : 3,16,123

Book Debts : stores 81,84,056

On sales Ledger	19,81,693
Current Account	26,071
Others	2,14,043
	22,21,807

Less : Reserve for Bad and Doubtful Debts

1,01,087

Rs.
21,20,720

Advance Payment for Income-tax	17,60,568
Other advances, e.g. to staff, contractors, pre-paid expenses	2,91,000
Excess Profits Tax Deposit	14,200
Sundry Deposit	13,011
Investments at cost	69,052
Accrued Interest	267
Cash and Bank Balances	87,111
Branch adjustments	24,909
	<hr/>
	1,35,63,926
Less : Secured Loan from Bank against stock	23,36,395
	<hr/>
Net assets after deducting the above secured loan	1,12,27,531
Less : Other Liabilities	88,69,813
	<hr/>
Equal to Capital plus Reserves	23,57,718

From the above it will be seen that the only tangible security on which a banker would have advanced moneys in this particular case would have been the stocks amounting to Rs. 81,84,056, but against this, there was already a loan of Rs. 23,36,395. A Bank would not have advanced on the strength of book-debts unless it does so as an additional cover, by way of a floating charge; nor would a Bank have advanced obviously against advance payment of Income-tax, advances to contractors, etc. It was argued before us by Mr. C. C. Shah that a Bank would advance on the security of all the assets, after deducting the secured loan amounting to Rs. 23,36,395 in the present case—in other words, on the entire net assets aggregating Rs. 1,12,27,531 which, according to him, were available for raising moneys. We cannot accept this as being in consonance with banking practice, and a first class bank, like the Allahabad Bank or the Lloyds Bank, would not have advanced on such considerations.

In the context of the last paragraph, the original commitment of Rs. 2,00,00,000 would have required a margin of Rs. 80,00,000 which Allenberry was certainly not in a position to furnish.

It may also be observed that Verma's evidence at one point was given with a flourish which had no foundation in fact. In speaking about what assets were available, he stated that the stock-in trade was Rs. 81,00,000 against which they had a loan of Rs. 26,00,000 (actually the loan was for Rs. 23,36,395); but he went on to say :

“.... and there is a reserve which was invested with our bankers, most probably, in London, and which amounted to quite a large sum of money.”

One has only to look at the Balance Sheet to appreciate the falsity of this claim because all that the company had in the shape of cash with the bankers on current account was Rs. 43,196.

From the above, we are convinced that Allenberry had not the means to raise the finances required for purchasing the disposal vehicles, let alone the purchase of stores and the R-3A Plant, which according to Shanti Prasad Jain, was discussed by the Director General of Disposals only on 11th July, 1946, and no Bank would have advanced Allenberry any moneys against the deal where the security was spread out at various locations, the quality of the security not being clearly ascertainable, liquidity whereof was unknown.

and finally, where the stocks were not under the control of the Banks. On the other hand, the speed with which certain events took place in a matter of two days from the incorporation of D. J. Airways up to the decision on 11th July, 1946, allegedly taken at a Board meeting of D. J. Airways on that day, leads to the inevitable conclusion that because Allenberry did not have the resources to embark on the deal, it was clearly the intention from the start to utilise the public moneys invested in D. J. Airways for this purpose.

Now the application (Ex. 77) that was made to the Examiner of Capital Issues on 3-5-1946 was for permission to float an *airways* company; and the company was floated as an *airways* company. The memorandum says that the business would be :

“to establish, maintain and work lines of *aerial conveyances*....and to manufacture, buy, sell, prepare, let on hire and deal in *air conveyances* of all kinds and component parts.”

As a matter of fact, there was never any intention to do any serious air business and the only reason the company was floated in this form was because aviation was very much in the public eye at that time and there was a big demand for shares in airways companies. This is evident from J. M. Gupta's letter, dated 26-6-1946 to the Examiner of Capital Issues (Ex. 80) in which J. M. Gupta asks for permission to issue the shares at premium of Re. 1 per share because, as he said,

“there is a very big demand for these shares even at a premium of two to three rupees.”

Mr. Misra argued that the assumption is wrong and he said that not only were they serious about the air business but that that was the *only* business they had in mind at that time. We have already held that that is not true. They had *both* businesses in mind from the start.

Mr. Misra relied on a series of applications made to a number of officers and government departments; also on their minutes where a number of interviews are recorded; also on the fact that they sent V. Poddar abroad to explore the possibilities of aviation business abroad. We do not doubt any of this except that V. Poddar may have been sent abroad for other reasons as well. The Dalmia Jain Group has many irons in the fire and we do not doubt that the ambitions of a man like R. Dalmia knew no bounds. That is apparent from his reminiscences on which both he and Shanti Prasad Jain relied. But that part, of course the group would have to put up an outward show of eagerness if they wanted to attract capital and get the necessary permission. What is more telling is their conduct. An ounce of fact is still worth a pound of theory. And what are the facts? We will proceed to set them out.

The following facts will show how the airlines business, which was never intended to be taken seriously, was played up and the real business (Disposal vehicles) played down.

The application of 3-5-1946 (Ex. 77) was in respect of air business alone and though only Rs. 40 lacs was asked for, for that purpose an expenditure of Rs. 5½ crores for the main business in disposal vehicles was already under contemplation and commitments for Rs. 242 lacs were made for it shortly after.

The application (Ex. 77) was confined to air business. But the Memorandum of Association travelled much wider. It fixed the authorised capital at Rs. 10 crores and provided for other kinds of business, either alone, or "*in partnership with others.*" Among the businesses set out, which included cycles, carts, carriages and perambulators, were those of "vehicles of all kinds" and "plants and machines of all kinds."

The clause stating that this could be "*in partnership with others*" shows that the D. J. Group had in mind the association of Allenberry with D. J. Airways from the start. It is also significant that though the airways business was given prominence and was given three separate paragraphs to itself, the disposal vehicles business was mentioned in an omnibus clause that spoke of "vehicles of all kinds" along with "cycles, carts, carriages and perambulators" and so apparently, the disposal vehicle and goods were classified with these humbler kinds of conveyance. No one reading the memorandum could have guessed that the main business was to be that of disposal vehicles and goods in partnership with Allenberry and that it was to extend to over Rs. 5½ crores while the aviation business was, at best, to be just a small side show.

It is true that it is customary to make the objects of a company's memorandum as wide as possible in order to obviate frequent applications to the court when some new venture is contemplated; no objection can be taken to the wide scope of the objects. But it is not usual to hide the real object for which a company is floated and emphasise another which is intended only as a side line. We are comparing the prominence given to the air business with the way in which the main business of the concern was squeezed into an omnibus clause where it can hardly be noticed among the cycles, carts, carriages and perambulators.

And now the close sequence of events subsequent to 3-5-1946 assumes importance. When J. M. Gupta applied to the Examiner of Capital Issues on 26-6-1946 for permission to issue the shares at a premium he said that

"we have *already purchased* six first class Dakotas."
and that

"we are *absolutely certain* to get the necessary licence for establishing and running schedule lines of communication between Calcutta, Patna, Benaras, Lucknow, Ambala and Lahore."

It turns out that the six "first class Dakotas" were old disposal Dakotas. The statutory report (Ex. 31) shows that up to 7-12-1946 (that is to say, even for six months after the letter) only Rs. 7,01,190-3-0 was expended on the purchase of aircraft. That indicates the condition and value of the "first class" Dakotas.

We questioned J. M. Gupta closely about the grounds on which his very confident assertion to the Examiner of Capital Issues was based. After much fumbling, and after a night's reflection, he said in the end that it was merely an "expectation." But this very confidence "expectation" was never realised: the air section of the business was run at a loss from the start and never earned any profits; nor can we see how they could have hoped to realise this "expectation" seeing the way they went about it. The aviation losses during the period of the joint venture (26-8-1946 to 30-6-1948) amounted to Rs. 16,52,039-3-9.

Counsel for Shanti Prasad Jain also had to admit that they were overconfident but he said that their belief in the soundness of the undertaking was honest. He said that all air companies ran at a loss. That is true, but all air companies did not try to run an air business with 6 old Dakotas costing only 7 lacs of rupees. Not even an optimist could have hoped to do air business that way.

D. J. Airways never got a scheduled licence. Only a *provisional licence* (which was never renewed) was issued; and it was confined to the operation of a *cargo* service for the carriage of goods between Delhi and Srinagar. Shanti Prasad Jain said in his written statement that no permanent licences were given in those days and that,

“since arrangements were made for satisfying all the requirements mentioned by Sir Frederick Timms, the promoters of Dalmia Jain Airways felt certain that having regard to the aforesaid assurance given by Sir Frederick Timms D. J. Airways would certainly get the necessary licence for operating scheduled lines.”

According to Shanti Prasad Jain the conditions imposed by Sir Frederick Timms were that they should purchase :

“aircrafts, such as, Bristol Wayfarer” and that they should “properly equip themselves.”

Shanti Prasad Jain did not bear this out in his evidence, therefore the evidence of J. M. Gupta stands uncontradicted.

J. M. Gupta said that Sir Frederick Timms had laid down certain conditions as a pre-requisite to the granting of the licence, one of which was the purchase of *new* aircraft and *good* equipment. These conditions were not fulfilled and no attempt was made to do so. All that was done was to buy some old *disposal* Dakotas for about Rs. 7 lacs; and yet D. J. Airways was prepared to spend Rs. 5½ crores in buying disposal vehicles and stores soon after. The two little adjectives “new” and “good” make all the difference; and of course that much have been so. Who would have promised an operating licence on the strength of 6 old disposal Dakotas?

Anyway, figures are more telling than words. The amount sanctioned for the aviation section of the business was Rs. 40 lacs. The total amount spent on aviation and other business (apart from the joint venture business) down to 30-11-1946 was only Rs. 21,70,000. Contrast this with the Rs. 2,42,00,000 to which Shanti Prasad Jain committed D. J. Airways for the disposal vehicles business along with Allenberry on 10-7-1946, just one day after its incorporation, and the further Rs. 2,50,00,000 to which R. Dalmia committed it on 2-8-1946, and the comparative importance that was attached to the two businesses becomes glaringly apparent.

As against this, on or about the same dates, the D. J. Group had its eye on the Rs. 5½ crores worth of disposal goods that the Director General of Disposals wanted to sell at a bargain price. But its concern Allenberry was not in a position to raise more than Rs. 1½ crores of the capital without the aid of a financing partner. The D. J. Group reached this conclusion after a careful examination of the implications that would be involved in the purchase. They consulted their bankers; they sent inspectors to evaluate the goods on the spot; and they held meetings among themselves. All this was in April and May and earlier.

The sanction for the issue of the Rs. 40 lacs capital was given on 4-6-1946. It was confined to aviation business. The company was registered on 9-7-1946 and on the *very next day* Shanti Prasad Jain entered into a provisional agreement with the Director General of Disposals for the purchase of Rs. 180 lacs of disposal vehicles lying at Moran, plus Rs. 5 lacs of jeeps and certain other vehicles the price of which had yet to be settled. He purported to act on behalf of Allenberry alone, but on the following day, when the agreement was finalised and confirmed letters of sale were drawn up in the names of Allenberry and D. J. Airways *jointly* and the price of Rs. 242 lacs was agreed to be paid by the two companies jointly.

On the same day, (11-7-1946), Shanti Prasad Jain signed the Statement in Lieu of Prospectus *on behalf of D. J. Airways*. There can, therefore, be no doubt that he acted for both companies in this transaction despite his attempt to show that he did not bind D. J. Airways to anything at that time.

The Statement in Lieu of Prospectus was issued because the Rs. 40 lacs was subscribed privately and that obviated the need to issue a Prospectus.

The Rs. 242 lacs was raised to Rs. 2,71,32,500 on 28-6-1948 (Ex. 90). But, leaving that aside, it is clear that Shanti Prasad Jain committed D. J. Airways to a purchase of Rs. 242 lacs worth of disposal goods jointly with Allenberry on 11-7-1946. Despite this there was no partnership agreement, there was nothing to suggest the terms on which the money should be contributed and how much each partner was to contribute; nor was it said how the profits and losses were to be divided. And yet the Rs. 242 lacs belonged to a public limited company and the partner was a private concern of the D. J. Group.

The commitment for the Rs. 242 lacs was completed on 11-7-1946. On the next day (12-7-1946) Shanti Prasad Jain applied to the Examiner of Capital Issues for permission to raise additional capital of Rs. 3,10,00,000 from the general public for the purpose of extending the business to include that of disposal vehicles and stores (Ex. 98). The application names J. Dalmia, R. K. Jain, J. M. Gupta and Shanti Prasad Jain as the directors of the company.

Now note the contents of that application. It was made the day after D. J. Airways had already been committed to the purchase. It asked for permission for *D. J. Airways alone* to raise the *entire* capital of Rs. 242 lacs for the goods *plus an additional Rs. 68 lacs for working expenses*. It said,

"We, in cooperation and partnership of M/s. Allenberry *have purchased* from the D. G. Disposals motor vehicles of the value of Rs. 242 lacs."

But where was the partnership? There was no deed. And what were its terms? The fact that the application said that the goods already purchased cost Rs. 242 lacs and that an additional Rs. 68 lacs was wanted for working expenses, and the fact that D. J. Airways asked for permission to raise the *entire* Rs. 310 lacs indicates that the intention was that D. J. Airways should pay for the whole.

J. M. Gupta tells us that,

"I see Ex. 82, dated 10-7-1946. Only the name of Allenberry is mentioned therein as the purchaser. It must have been decided

either on 10-7-1946 or 11-7-1946 that the purchase should be by both companies.... On seeing Ex. 87 I now remember that the purchase was to be by both companies."

He was present at the time, so ought to know. However, quite apart from him, the story put forward by Shanti Prasad Jain of this last minute decision reached in a matter of two or three hours to take on D. J. Airways as a financing partner is so improbable that we are convinced that the decision from the beginning was that the purchase should be a joint one and that the decision was reached on or before 10-7-1946. Ex. 82, dated 10-7-1946 appears to us to embody the negotiations for the purchase that was completed on the 11th July, by Exs. 87 and 89.

It is true that the mention of Allenberry alone in Ex. 82 does lend support to Shanti Prasad Jain's version but the story in itself is so importable and the rest of the circumstances tell so strongly against it that we are not able to believe it and prefer the more natural version given by J. M. Gupta. Also the sale bill, Ex. 94 for Rs. 50 lacs, which was admittedly for a joint venture purchase, was made out by the same Director General of Disposals in the name of Allenberry alone. Therefore, the fact that Allenberry alone was mentioned in Ex. 82 is not by any means conclusive. In any case, how could any businessman commit himself to a transaction involving over Rs. 242 lacs without having thought out its financial implications well before hand. This idea of getting all the money from the public could not have been worked up in a couple of hours.

Now Ex. 87 says that Rs. 20 lacs of the purchase money was to be paid on 12-7-1946. Allenberry was in no position to pay the Rs. 20 lacs from its own funds on 12-7-1946 and it looked to D. J. Airways for the money.

D. J. Airways could hardly have decided on 11-7-1946 to make the purchase and pay Rs. 20 lacs on the very next day. The decision must have been reached well before 11-7-1946; and certainly before the date of incorporation.

In any case, whatever the intention about payment, the fact remains that Allenberry never contributed anything from its own funds except an initial Rs. 82 lacs (Ex. 89) which it recouped from D. J. Airways within 15 days.

Close on the heels of the application, dated 12-7-1946 came the next step in the scheme. As we have seen, the Director General of Disposals had over Rs. 5½ crores worth of goods that he wanted to dispose of. The disposal vehicles purchased on the 10th and 11th of July accounted for only Rs. 2,71,32,500. (The original Rs. 242 lacs was later raised to this figure. Ex. 90). This left another Rs. 250 lacs of vehicles in the market. At this juncture R. Dalmia stepped openly onto the stage and purchased the remaining Rs. 250 lacs on behalf of Allenberry and Dalmia Jain Airways on 2-8-1946 (Ex. 92). He was not a director of either company at that time; nor had he been put forward as a promoter; and though Dalmia Jain & Co. were *proposed* as managing agents on 12-7-1946 (Ex. 98) the *agreement* was not made till 28-8-1946 (Ex. 781); and yet he committed D. J. Airways to this further purchase. Again, there was no resolution of either Board of Directors and he held no power of attorney from D. J. Airways *also there was still no partnership agreement.*

The negotiations for this deal were carried on with two representatives of the Director General of Disposals on the one side, and R. Dalmia and J. M. Gupta on the other. J. M. Gupta signed the minutes of that meeting as "Director of Allenberry and Dalmia Jain Airways; but the minute (Ex. 91) makes it clear that R. Dalmia made the purchase.

The formal sale note was signed on 2/7 August, 1946 and was drawn up in favour of both companies.

Now who was there to protect the interests of the public in either of these two deals?—not a single independent person. R. Dalmia, Shanti Prasad Jain and J. Dalmia were members of the D. J. Group and were keenly interested in Allenberry. J. M. Gupta was an employee and a dummy; and in any event was a director of both concerns; and so was Shanti Prasad Jain. The only other person was R. K. Jain. He is a relation of Shanti Prasad Jain and was an employee in the Bharat Bank, another D. J. Group concern and could hardly have stood up against the D. J. Group, especially as the Bharat Bank was their banker. In any case, the fact remains that he did not and that he allowed Shanti Prasad Jain and R. Dalmia to commit D. J. Airways to a joint purchase of over Rs. 5½ crores of disposal goods without any formal agreement, without insisting on clear cut terms of partnership, and, if Shanti Prasad Jain is to be believed, within a couple of hours after the D. J. Group had decided that D. J. Airways should contribute the money. And how could they decide that? Shanti Prasad Jain and J. M. Gupta were both interested directors. That left R. K. Jain. How could he form a quorum by himself?

It is evident from the above that the decision to bring D. J. Airways into the picture did not arise over-night. The sequence of events given by V. H. Dalmia shows that all these negotiations and deliberations must have occupied several days. We see no reason to doubt V. H. Dalmia's statement that the plan was formulated at least by April or May 1946, especially as it is corroborated by (a) the visit of Verma and Williamson to the Moran Depot, (b) by Verma's statement to the arbitrators (Ex. 402).

This is also corroborated by what R. Dalmia said in his affidavit in the Bombay High Court. He said there,

"Dalmia Jain Airways *provided the finances while Allenberry provided its technical skill for the purpose of carrying on the business of the disposal goods in partnership.*"

J. M. Gupta said that he thought the decision was reached about a month before the purchase. But without attempting to fix an exact date it is evident to us that the decision to bring in D. J. Airways and to use its funds was reached before D. J. Airways was incorporated as a company; and the subsequent facts which show that D. J. Airways contributed the entire money for the initial purchases on 11-7-1946 *even though it was contended that the D. J. Group could have raised Rs. 1½ crores by arrangement with their banks*, coupled with the fact that there was never any serious attempt to run the aviation business, leaves us in no doubt that the intention of the D. J. Group from the start was to float a public limited company to finance their own concern and to retain all the benefits of the deal for themselves. The very fact that a commitment of this magnitude was made within two days of the floatation of a company that had been put forward as an *aviation company*

indicates bad faith; especially when we know that the same man, Shanti Prasad Jain, acted on behalf of both companies without a formal agreement between them.

But, it hardly matters whether the decision to use the money of D. J. Airways was reached before or after the floatation because the fact remains that it was used solely for the benefit of Allenberry and in cynical disregard of the interests of the investing public.

CHAPTER IV

D. J. AIRWAYS: PROMOTION AND FLOATATION

Bearing this background in mind we will now examine how D. J. Airways was floated and how the D. J. Group acquired control of it.

The persons who signed the Memorandum and Articles of Association were (1) B. L. Tandon, (2) S. G. Rau, (3) S. L. Verma, (4) Kailash Chandra, (5) B. N. Kanagat, (6) J. M. Gupta and (7) Shadilal Saluja. They were employees of one or other of the D. J. Group concerns; and none had any personal interest or stake in the company. It is impossible to think that they could have conceived the idea of floating a company with an authorised capital of 10 crores.

S. G. Rau and Kailash Chandra, did not file a written statement and so did not deny what we said about the promoters in our statements of matters. The others admitted our allegations. This is what they said about themselves.

B. L. Tandon.

"I joined as a promoter at the instance of Shri Shadi Lal Saluja who was then the Personal Assistant to the Managing Director of the Bharat Bank. I have no personal interest in so joining as promoter. I lent my name as promoter as I was an employee of the Bharat Bank".

S. L. Verma.

"I had no personal interest in the floatation. I subscribed. . . . as a nominee of some company the name of which I do not remember".

B. N. Kanagat.

"I signed along with my colleagues at the instance of one of them. I being a person of ordinary means could not dream of floating such a big company or as a matter of fact any company. I had no personal interest or stake in the company. I did not even pay for the 5 shares subscribed in the Memorandum of Association".

J. M. Gupta.

"To the best of my recollection I did not pay for the 5 ordinary shares that I was shown as holding. I was an employee of the Group. . . . and was asked to sign. . . . I was a man of small means; did not invest any capital and was incapable of floating a company of the size and magnitude of D. J. Airways".

S. L. Saluja.

"I was influenced by one of the members of the group to sign. . . . That as one of their employees the job I held under them was the only means of sustenance for me at the time. As such I

could not have conceived the idea of floating a company. I had no stake or interest. nor do I remember that I had paid for the shares purchased in my name."

J. M. Gupta described himself as a "dummy", and, after listening to his evidence we cannot think of a more apt description. We are clear that the other subscribers named above were also dummies and that the real promoters were the D. J. Group. That is also to be gathered indirectly from the evidence of V. H. Dalmia who told us how the plan unfolded. He nowhere spoke of any of these other persons. Why then, if all was above board, did the group remain in the background? The fact that they did not come forward supports the inference that all was not above board.

CHAPTER V

D. J. AIRWAYS: CONTROL THROUGH DIRECTORS

We will next examine the control that was exercised through the directors; namely (1) Shanti Prasad Jain, (2) R. K. Jain, (3) J. M. Gupta and (4) J. Dalmia.

Shanti Prasad Jain is a member of the D. J. Group and we have seen that on 10-7-46 he acted on behalf of Allenberry in negotiating for the purchase of the disposal vehicles that were bought two days later for Rs. 242 lacs by both Allenberry and D. J. Airways. R. K. Jain was an employee of a D. J. Group concern and J. M. Gupta was also an employee and, according to his own description of himself was nothing but a "dummy".

On 5-8-46 another member of the D. J. Group was added as a Director, namely J. Dalmia. He stayed on till 15-11-48 and on that date he was replaced by Jagmohanlal Raizada who is distantly related by marriage to R. Dalmia. (Jagmohanlal's brother, Brijmohanlal, married R. Dalmia's sister's daughter).

According to Shanti Prasad Jain he resigned on 22-7-48 but the Registrar's record shows that he remained as a director till 28-8-48; not that that makes any difference.

After this there was no change till 4-3-49 when R. K. Jain stepped out and R. Dalmia took his place on the following day. Therefore, on 5-3-49 the directors were (1) R. Dalmia, (2) Jagmohanlal Raizada and (3) J. M. Gupta.

Those who came after 5-3-49 were either relatives or were employees of a Dalmia concern. They were (1) P. N. Mehta, (2) V. S. Chordia, (3) Shital Prasad Jain, (4) R. L. Chordia, (5) M. L. Sodhani and (6) R. Sharma.

As regards Shital Prasad Jain, he did not join the Board till 10-5-51; but J. M. Gupta and P. S. Patke describe the role that he played behind the scenes. According to P. S. Patke, Shital Prasad Jain was concerned with the appointment of directors to the various companies belonging to the Dalmia group of companies and Patke is corroborated by Ex. 203 a letter dated 10-4-49 written by Patke to M. R. Jain. J. M. Gupta tells us that Shital Prasad Jain in turn took his orders from R. Dalmia. He was also in charge of the accounts at Dalmianagar.



CHAPTER VI

D. J. AIRWAYS : CONTROL THROUGH SHAREHOLDINGS

Control was also exercised through the shareholdings. An analysis of the positions on the following dates reveals how the general public were slowly squeezed out.

In the initial stages the public held 91.3% of the shares amounting to Rs. 3,19,55,650 while the D. J. Group and their employees, relatives and concerns had only 8.7%.

On 20-6-51 the public held 86.2% and R. Dalmia and his satellites 13.8%.

In December 1952 the public held 43.6% while the shareholdings of the others rose to 56.4%.

It will be seen that the public held the majority of the shares till December 1952, and yet the D. J. Group was able to exercise control. This is because the D. J. Group was a concentrated group while the other shareholders were scattered. Consequently, even though the shareholdings of the group were only 8.7% of the whole they were able to exercise control by co-ordinating the votes of the shareholders under their control.

Control through Managing Agents.

Another method of control was control through the Managing Agents.

Dalmia Jain & Co. Ltd. were the Managing Agents of D. J. Airways. Now this managing agency company was completely controlled by the D. J. Group. The members of the Group and their relatives held 100% of the ordinary shares and 95% of the Preference shares. R. Dalmia was paid a salary of Rs. 8,000, and later Rs. 7,500, per month as remuneration for looking after the affairs of D. J. Airways on behalf of the Managing Agency.

One of the prominent directors of this managing agency company at the time that D. J. Airways was brought into existence was Shanti Prasad Jain. Others were (1) his wife Rama Rani Jain, (2) J. Dalmia, (3) V. H. Dalmia and (4) M. K. Roy. The last was one of their employees.

Among the shareholders of the company were (1) R. Dalmia, (2) his wife, Durga Devi Dalmia, (3) the wife of Shanti Prasad Jain, Rama Jain and (4) the Dalmia Jain Trust.

There can therefore be no doubt that D. J. Airways was completely controlled by the D. J. Group at the start and that that control was maintained by at least R. Dalmia all the way through.

CHAPTER VII

D. J. AIRWAYS : INITIAL SUBSCRIBERS : 114 FICTITIOUS PERSONS

Out of the first 121 names in the register of subscribers not less than 114, to whom share certificates were issued, were fictitious. They are, and were, non-existent persons. We made the following attempts to trace them.

97 of the 114 applications contain addresses in India. The rest are said to reside in Pakistan. We did not write to the Pakistan addresses but sent registered letters to the 97 Indian addresses. Of these letters 92 were returned with endorsements, "non-existence" or "non-traceable."

All these 114 persons are said to have lived outside Delhi in widely scattered area of India and Pakistan and yet they are said to have remitted their money, not by draft or cheque or hundi but *in cash*. Some individual remittances were made in lump sums of Rs. 20,000 and Rs. 50,000 *per remittance* and others in lump sums ranging from Rs. 10,000 to Rs. 20,000 *per remittance*. It is not usual for such large sums to be paid in cash and still less for them to be paid within the space of a few days by over 60 persons living in widely scattered areas of the country.

The money was all remitted to the Bharat Bank, Delhi (a purely D. J. Bank). This bank received it *in cash* large sums of Rs. 1 lac, 4 lacs, 5 lacs and 6 lacs at a time, on four days as follows :

On	11-7-46	Rs. 5 lacs
	13-7-46	Rs. 1 lac
	16-7-46	Rs. 4 lacs
	17-7-46	Rs. 6 lacs

TOTAL	Rs. 16 lacs
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The number of shares issued to each ranged from 250 to 5,000. No less than 50 of these 114 persons are said to have invested sums ranging from Rs. 10,000 to Rs. 20,000 each; and 11 are said to have invested from Rs. 20,000 to Rs. 50,000 each. If they were real persons they were clearly men of substance. We find it hard to believe that not one of them should be known in the localities in which they are said to have lived, or be traceable after a lapse of only 13 years.

Mr. Misra said that the addresses were simply Mr. X. Y. Z. Patna, etc. He said that even if they were existing persons letters addressed like that would not be likely to reach them, especially after a lapse of 13 years.

The answer is that that is how the addresses were given in the letters of allotment. Section 104A of the Indian Companies Act, 1913 requires full addresses and descriptions of the allottees to be given, and if that was all that was given how were the allotments made?

But that is not all. There are more curious facts. Of the 1,60,000 shares said to have been allotted to and held by persons in such widely scattered localities no less than 1,58,850 are said to have been transferred by these 114 persons to only 4 persons and 2 concerns; and the bulk of the transfers are said to have been effected *on one day*.

The two concerns are the General Marketing Co. and the Premier Merchants Ltd. Both are R. Dalmia concerns. One of the 4 persons is V. S. Chordia, an employee and a brother-in-law of R. Dalmia. These two concerns and V. S. Chordia between them accounted for Rs. 15,76,000 worth of shares out of the Rs. 16,00,000 and bought the entire lot on one day (4-7-50) as follows :—

General Marketing Co.	.. .. .	83,000 shares
Premier Marketing Co.	.. .. .	72,900 shares
V. S. Chordia	.. .. .	1,600 shares
		<hr/> 1,57,600 shares

Now each of these two concerns had an authorised capital of only Rs. 10,000, of which only Rs. 1,000 was paid up. There were only two shareholders in each, the same two, Prem Nath Mehta and Shri Ram Shrivastava. Each of them held 50 shares in each of the two concerns and both were subscribers to the Memorandum of Association of those two companies.

We will now see how these concerns, with a paid up capital of only Rs. 2,000 between them, managed to buy shares that had been issued for Rs. 15,60,000.

They had no financial resources of their own so each borrowed Rs. 98,000 from the Bharat Bank (and R. Dalmia Bank) in May 1949 on the security of Rs. 1,70,000 shares of D. J. Airways, that is, each pledged 85,000 shares of D. J. Airways with the Bank. The money as advanced was withdrawn from the Bank by two cheques each drawn on "self" and each bearing the same date 31-5-49.

The shares were bought on 4-7-50 at low rates ranging between Rs. 1/9 and Rs. 1/10 per share for each Rs. 10/- share. The price quoted on the Delhi Stock Exchange for D. J. Airways shares on 3-7-50 was Rs. 2/2.

Even if the 114 persons were real persons, their shares, for which they had paid Rs. 10/- each, were acquired for Rs. 1/9 and Rs. 1/10 per share even when the market rate was Rs. 2/2. If the transactions are genuine then this is another example of how money flowed from the pockets of the investing public into the coffers of the D. J. Group concerns for the ultimate advantage of members of the D. J. Group.

However, in this particular case, it is clear that the 114 persons were fictitious and that the issue of the Rs. 16 lacs worth of shares in these fictitious names was fraudulent. It was also a breach of trust; see Buckleys Company Law Companies Act, 12th edition, P. 864 and 865.

We can only guess why this was done and cannot prove it; but, in the absence of any reasonable explanation it seems that this was a manoeuvre to bring the secret profits of the D. J. Group (popularly known as "black money") into circulation and convert it into what is known as "white money".

We deem it reasonable to infer that the Rs. 16 lacs came from the pockets of the D. J. Group. We say this because as much as Rs. 15,76,000 went to two R. Dalmia concerns that were, so to speak, "men of straw" and to a brother-in-law of R. Dalmia *in one day*. We are not able to believe that 114 separate persons, said to be living in widely scattered areas of India and

Pakistan, would suddenly decide to sell to these two concerns and to R. Dalmia's brother-in-law on one day.

We also know from what happened before the Income Tax Investigation Commission that the Group did have over Rs. 4 crores of secret and undisclosed assets down to the year 1947 (Ex. J. 24).

These facts, coupled with the earlier fact that the money for the shares is said to have found its way into the Bharat Bank from all over India and Pakistan *in cash* in lump sums of 1, 4, 5 and 6 lacs on just four days, leads us to infer that the whole thing was bogus and that it was manipulated for an improper end by those conducting the affairs of D. J. Airways.

Mr. Misra questioned the accuracy of the numbers that we have given namely 114, and of the figures that flow from it. For example, he said that no notices were sent to the 9 subscribers with Pakistani addresses.

It is true that there is no direct evidence to show that these persons were all non-existent, but the facts set out above justify an inference that they were fictitious. But, even if there are a few inaccuracies, as the exact numbers do not matter, we are justified in concluding that there were a large number of fictitious names, which, to the best of our accounting appear to be in the neighbourhood of 114. The main thing, so far as we are concerned is to find whether this malpractice was resorted to and whether it was on a fairly substantial scale. As we are not a court of law assessing damages or the like the exact numbers and the exact sums of money involved do not matter. All we are concerned with is the broad overall picture.



CHAPTER VIII

D. J. AIRWAYS : UNDERWRITING COMMISSION

One of the methods employed by the D. J. Group for draining money from public companies was to get their own concerns appointed as underwriters and managing agents and then get them paid large sums of money. In the case of D. J. Airways the position was as follows. We will deal with the underwriters first.

We are not attacking the commercial practice of underwriting; nor do we wish to imply that what was done here was illegal or fraudulent. But we are of opinion that the facts that we shall now bring out reveal an undesirable state of affairs in the commercial world in that they show how a practice that is otherwise beneficial can be abused without breaking the law or departing from prevalent commercial practices. These are the facts.

The application (Ex. 77) made to the Examiner of Capital Issues on 3-5-46 for issue of Rs. 40 lacs share capital named Dalmia Jain & Co. as the underwriters; but this company was not paid anything and the matter seems to have remained in abeyance till 12-7-46. There was no provision for managing agents in the application.

On 12-7-46 a second application (Ex. 98) was made to the Examiner of Capital Issues for the issue of a further Rs. 310 lacs of share capital. No underwriters were named but provision was made for the following :—

“Brokerage and underwriting commission to be paid to *bona fide* brokers.”

Now Dalmia Jain and Co., the only company mentioned as underwriters up to that date, were not brokers and had never been brokers, so either the D. J. Group had *bona fide* brokers in view at that date or this was a misleading statement. It is pertinent to note that Dalmia Jain & Co. were named as the proposed managing agents in this application.

From there we pass on to 24-8-46 (Ex. 103). This is the date of the underwriting agreement made with D.C.P.M., a totally different concern except for the fact that it was a Dalmia Jain Group company. Here D.C.P.M. were to be paid for underwriting Rs. 345 lacs worth of shares and it was said that this was “all the issued capital”.

D.C.P.M. was paid Rs. 7,86,955 as its underwriting commission sometime before 7-12-46 out of the amount received from the shareholders of D. J. Airways.

We do not know why D.C.P.M. was substituted for Dalmia Jain & Co. It was not an underwriting organisation and we can only guess at the reason, namely that, as Dalmia Jain & Co. were to be appointed managing agents it would have looked bad to have them receive the underwriting commission as well. Anyway, D.C.P.M. were not brokers either.

Now this raises several issues. Underwriters are essential in an advanced commercial age. They are paid for the risks they run. But in this case D.C.P.M. ran no risk and had very little to do.

The second application (Ex. 98) for Rs. 310 lacs was made on 12-7-46 (Ex. 98), but the underwriting agreement was not signed till 24-8-46 (Ex. 26/2). Two days later the Prospectus (Ex. 103) was issued. The directors said in the Prospectus that the *full* amount of the issued capital of Rs. 3½ crores *had already been received*. Also Ex. 48, the account of D. J. Airways with the Bharat Bank at Delhi, shows that Rs. 1,95,86,391-14-10 had been paid into this bank before 26-8-46. The rest of the amounts were received before that date at other places, such as Bombay and Calcutta, but were not remitted to Delhi till later, and then not in cash : only book adjustments were made, that is to say, the account of D.C.P.M. in the books of D. J. Airways was debited with Rs. 56,56,947-12-0 towards the share application money received by D.C.P.M. on behalf of D. J. Airways. Therefore D.C.P.M. ran no risk in underwriting the Rs. 345 lacs. But even if they did, what does it all add up to ?

The Dalmia Jain Group wanted to corner the market in disposal vehicles. They had not the money, or if they had, they did not want to use either their own money or that of their concerns. So they decided to get the money from a public concern and use it for their own benefit, or at any rate for the benefit of one of their private concerns; and in order to assist the public concern to raise this money intended for their own exclusive benefit and that of their private concern Allenberry, the D. J. Group made themselves a present of Rs. 7,86,955.

CHAPTER IX

D. J. AIRWAYS : MANAGING AGENCY

We turn next to the Managing Agency. In this case Dalmia Jain and Co. who had been proposed as the underwriters on 3-5-46 and then dropped in favour of D.C.P.M., were put forward as the managing agents on 12-7-46 (Ex. 98). A copy of the agreement is available (Ex. 781), but the original is not forthcoming, nor is any resolution to be found about this in the Directors' minute books either of D. J. Airways or Dalmia Jain & Co. But the terms that are set out in the prospectus (Ex. 103) dated 26-8-46 are as follows. Dalmia Jain and Co. were to be paid,

(a) an office allowance of Rs. 7,500 a month; and

(b) a commission of 10% on the net profits of the company;

and they were to continue as managing agents for a period of 20 years from 9-7-46, the date on which D. J. Airways was incorporated.

Now what was the result of all this? Although these various companies appear to be separate and independent units the following facts will show how false that assumption is. We give below a side by side list of the Directors of Allenberry, D. J. Airways, D.C.P.M. and Dalmia Jain & Co. from 9-7-46 (the date of incorporation of D. J. Airways) down to 26-8-46, the date of the agreement.

<i>D.J. Airways</i>			<i>Allenberry</i>			<i>D.C.P.M.</i>			<i>Dalmia Jain & Co.</i>		
Shanti Pd. Jain (Director).			Shanti Pd. Jain (Director).			(a) Shanti Pd. Jain (Director and Promoter).			(a) Shanti Pd. Jain (Shareholder and Director).		
						(b) His wife Smt. Rama Jain (Director).			(b) His wife Smt. Rama Jain (Shareholder)		
J. Dalmia (Director from 5-8-46).			J. Dalmia's son V.H. Dalmia age 21 (Director).			(a) J. Dalmia (Director and Promoter).			J. Dalmia (Director and Shareholder).		
						(b) His son V. H. Dalmia (Director).			V. H. Dalmia.		
J. M. Gupta (Director and Subscriber).			J. M. Gupta (Director).			J. M. Gupta (Director and Manager).					
						M. K. Roy (Director).			M. K. Roy (Director and Shareholder).		
			H. D. Bishnoi (Director).			H. D. Bishnoi (Director).					
R. K. Jain (Director).			R. P. Bajoria (Director).			V. D. Agarwal (Director).					

R. Dalmia, his wife Durga Devi Dalmia and the Dalmia Trust were shareholders in Dalmia Jain and Co.

R. Dalmia was not a director of either D. J. Airways or D.C.P.M. or Allenberry or Dalmia Jain & Co. at that time. But he was managing the affairs of D. J. Airways on behalf of the managing agents Dalmia Jain & Co. He was also one of the promoters of D.C.P.M. and had the predominant voice in the affairs of these three companies.

This table will show that for all intents and purposes the same group of persons acted all through for all three concerns. It means that the Dalmia Jain Group, acting through Shanti Pd. Jain and J. Dalmia and their two stooges, J. M. Gupta and R. K. Jain, first got Rs. 345 lacs of money from the general public for their private concern Allenberry.

Next, they voted to pay themselves Rs. 7,86,955 as underwriting commission out of the money of D. J. Airways for the privilege of raising the money for themselves; and

Then they voted that they pay themselves a big managing agency commission for the privilege of using the money of D. J. Airways for running their private business.

We recognise that all this could be done quite legitimately under the then prevalent commercial practices, but it shows how easily money taken from the public can be used for the enrichment of private individuals and their concerns with very little effort and without a commensurate benefit to the public from whom the money is taken.

Anyway, that was the position of 26-8-46. We will now proceed to examine how the funds of D. J. Airways were used.

We have already dealt with the Aviation section of the business of D. J. Airways. We will examine how its funds in the joint venture section (Disposal Vehicles and Stores) were dealt with in the next volume of this report. But we will say here that the joint venture agreement, Ex. 36, was signed on 26-8-46, which is the same day as the one on which the managing agency agreement was signed.

(VIVIAN BOSE)	(V. R. SEN)	(N. R. MODY)	(S. C. CHAUDHURI)
New Delhi	New Delhi	Bombay	New Delhi
15-6-62	15-6-62	16-6-62	15-6-62

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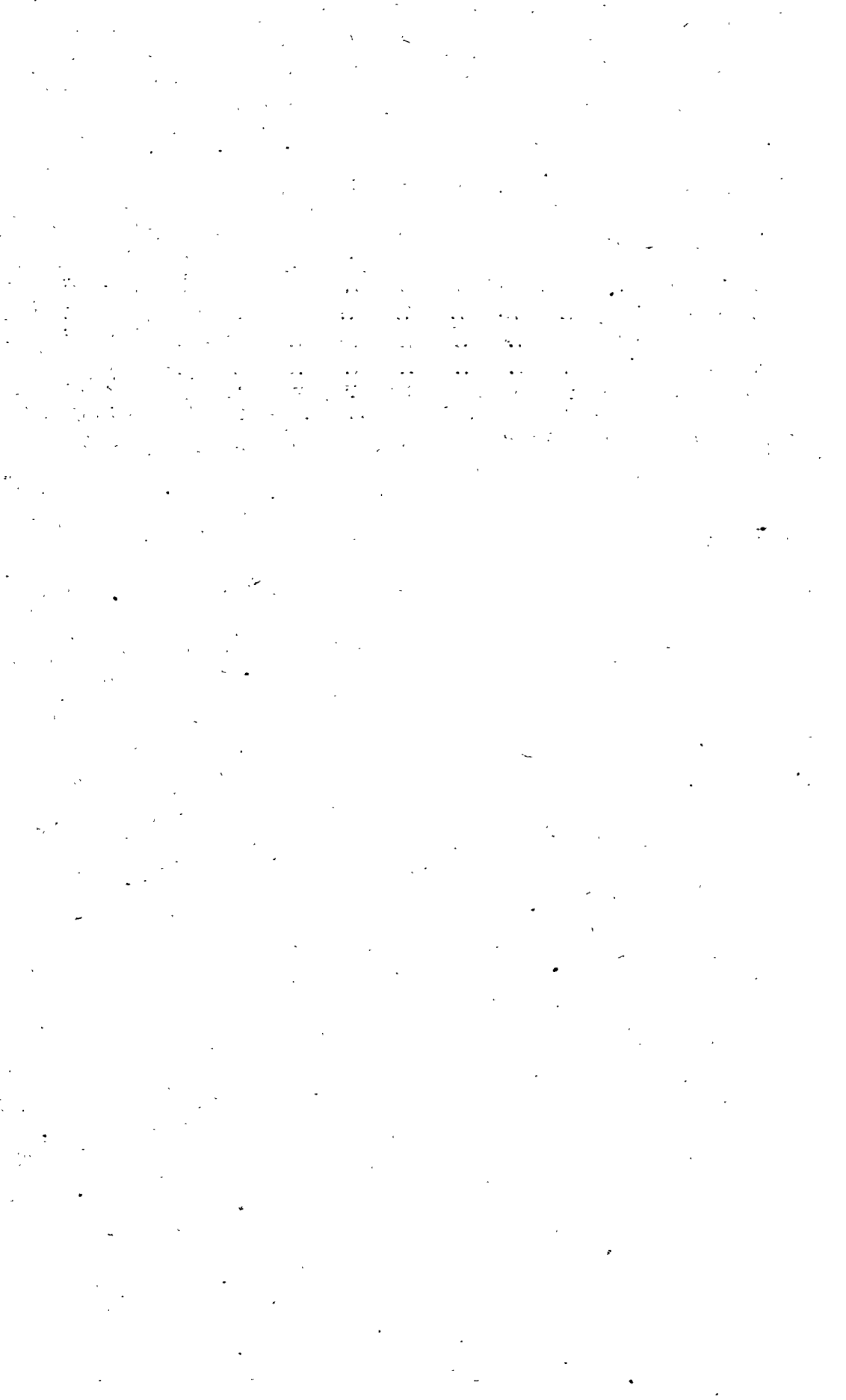
Part 2

ALLENBERRY AND D. J. AIRWAYS

(Joint Venture Period)

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CHAPTER I

JOINT VENTURE AGREEMENT, EX. 36

Dated 26-8-1946

We have already held that the idea of taking on a financing partner because Allenberry could not raise the Rs. 5½ odd crores required for cornering the market in these disposal vehicles and stores arose in April or May 1946, or earlier. We have also seen that Shanti Prasad Jain committed D.J. Airways to a purchase of Rs. 232 lacs (later raised to Rs. 2,71,32,500) on 10-7-1946 and 11-7-1946 and that shortly after, on 31-7-1946 and 2-8-1946, R. Dalmia committed D.J. Airways to a second purchase valued at another Rs. 250 lacs. Both purchases were in partnership with Allenberry. But the commitments were made without any formal authority from D.J. Airways; they were made without any partnership agreement; and no terms were specified or settled. Also, so far as any normal reading of Ex. 98 goes, one would have concluded that D.J. Airways was to supply the *whole* of the capital of Rs. 310 lacs and Allenberry nothing; and further, though according to V. H. Dalmia and Shanti Prasad Jain, Allenberry was in a position to raise Rs. 1½ to 2 crores, it made no attempt to do so. All that it did was to make an initial payment of Rs. 82 lacs on 11-7-1946 (Exs. 87, 89 and 402) and recoup itself from the funds of D.J. Airways on 26-7-1946.

Before we look into the terms of the agreement Ex. 36, we will set out a few facts to show how this partnership was brought about because the fairness or propriety of an agreement cannot be determined in the abstract. The surrounding circumstances and the status of the persons involved have also to be taken into consideration. For example, a man is normally free to invest his money as he likes. He can speculate with it or plunge into ventures that may or may not pay off. But when he is handling the moneys of other persons he is not in the same carefree position. A trustee, for example, cannot invest trust funds in any but trust securities however attractive and sound some other venture may appear to be; and so it is all down the line with varying degrees of care and responsibility enjoined, sometimes by the law and sometimes by plain commonsense and prudence.

The Commission said in its statements of matters that the formation of the joint venture was improper for the following, among other, reasons.

- (1) Because the persons who negotiated the deal on behalf of D.J. Airways were interested in Allenberry and controlled Allenberry;
- (2) Because, infact, the same persons negotiated the deal on both sides, the rest being either dummies or common to both companies;
- (3) Because both companies were controlled by the same group;
- (4) Because D. J. Airways was not given the benefit of independent legal advice and, as it was under the control of the D. J. Group who also controlled Allenberry, it should have been given this advice; and

- (5) Because the normal fiduciary relationship that should exist between partners was not there.

Shanti Prasad Jain's answers to these assertions were as follows :—

- (1) He said that after the agreement of 10-7-1946 was made with the Director General of Disposals,

“an arrangement was arrived at between Allenberry & Co. Ltd. and D.J. Airways Ltd. whereby it was agreed that the purchase.....should be under a joint venture—.....”

and that the two,

“should have equal shares in the profits and losses.”

This arrangement, as we have seen, was entered into after lunch on the afternoon of the 11th July without, according to Shanti Prasad Jain, either side having given a moment's previous thought to the matter; also the convening of the meeting of the Board of Directors of Allenberry on the one hand, and of D.J. Airways on the other, and the discussions and the decisions on both sides were all over in a couple of hours.

He also said in his written statement,

- (2) “It is submitted that Allenberry & Co. Ltd. did not owe any fiduciary obligations to D. J. Airways.”

- (3) “It is denied that Dalmia Jain Airways was not given the benefit of independent legal advice.”

- (4) (a) “It is not correct to say that all the persons who negotiated the deal on behalf of Allenberry were interested in Allenberry.”

- (b) “The directors of D.J. Airways other than the members of the Dalmia Jain Group were senior executive officers.”

- (c) “The affairs of the said company were also controlled by its Board of Directors and the management of the affairs of the said company vested in the Board of Directors.”

It is a startling thing to be told without qualification that there is no fiduciary relationship between partners. Section 9 of the Partnership Act, 1932 says that they must be “just and faithful” towards each other, which is another way of saying much the same thing. And Section 88 of the Indian Trusts Act actually imposes a fiduciary character on a partner in certain cases. Shanti Prasad Jain's answer illustrates his mentality; and it is that very thing that we assert, namely that the attitude of the group towards these public companies was just that; the attitude of an Irish horse dealer selling a horse : the more unwary and gullible the purchaser the better the deal.

It is a curious fact that no witness has told us who the independent legal advisers of the D.J. Airways were, or whether there ever was any legal advice. These are facts within the special knowledge of Shanti Prasad Jain who negotiated this agreement about partnership from the side of D.J. Airways as well as from that of Allenberry.

In such a case the Indian Evidence Act casts the burden of proof on the person who has special and inside knowledge of the facts. See section

106. The truth is that there was no legal advice. We would have been told so on enough if there had been.

We have already seen that the only persons who, according to Shanti Prasad Jain, were present at the meeting of the Board of Directors of D.J. Airways on the 11th afternoon were Shanti Prasad Jain, J. M. Gupta, and R. K. Jain. Quite apart from the fact that R. K. Jain could not have formed a quorum by himself, this is what he said in his written statement :

"I was not responsible for the partnership entered with ABC Ltd.; which was in fact entered into by the managing agents. I do not remember having attended any Board meeting in which the matter of the joint venture came up for discussion either before or after the execution of the agreement."

J. M. Gupta's attitude is summed up in his written statement.

"I came into the picture only for the purpose of paper transactions in respect of matters decided upon by the D.J. Group."

Now we are not relying on these statements to establish positive facts but only to show the kind of directors whom Shanti Prasad Jain extols as independent. In the end, even his counsel had to admit, because of their stand on other matters where it was necessary to show that R. Dalmia dominated the other members of the group in the discharge of their directorship duties, that these directors were not independent. They did as they were told. But Mr. Misra said that that is inevitable when an individual or a group of persons controls a large number of companies.

Therefore, it narrows down to this. D.J. Airways was forced into this partnership by Shanti Prasad Jain acting in the foreground and R. Dalmia directing operations from behind, because these two persons wanted the money of D.J. Airways for their own concern, namely, Allenberry. D.J. Airways never had any will of its own and except as a legal fiction, it never had any independent existence.

But forget that for a moment. Let us accept what Mr. Misra said and assume that this sort of situation is inevitable so long as you have group control. Even then, a man who has control of public funds and is acting on both sides of a deal in which he is personally interested is expected to exercise reasonable precaution on behalf of the public whom he represents. But what did Shanti Prasad Jain do?

1. He entered into a partnership agreement on behalf of D.J. Airways without even bothering to consider the most vital part of a partnership agreement, namely, who was to contribute the capital and to what extent. The only term that he set out in his written statement was that each partner was to share the profits and losses half and half;
2. He was in charge of a company whose sole business, according to Shanti Prasad Jain was aviation business—in any case it was the only business it was doing at that time; and its sanctioned and issued capital was only Rs. 40 lacs. But, without giving the matter more than two hours thought he suddenly switched it over to a totally different kind of business involving a financial commitment of Rs. 5½ crores. How can that be considered responsible behaviour?

It is enough to set out these facts to show up the pretence that at D.J. Airways was left any freedom of choice or that it was acting independently, or that the deal was negotiated at arms length.

In those circumstances the law examines the transaction with the utmost strictness and with jealous suspicion, meticulously scanning its fairness line by line and item by item; and is swift to take note of the slightest indication of undue advantage.

We will now turn to the partnership agreement signed on 26-8-1946 (Ex. 36). In our opinion the terms were one sided and favoured the private enterprise of the D.J. Group, Allenberry, at the expense of the public limited company.

As there is disagreement about the legal interpretation of the terms it will be necessary to set out the relevant clauses.

In a partnership agreement one of the most important clause relates to the contribution of capital. Ex. 36 deals with this as follows.

Clause 1.

"The purchase price of the aforesaid vehicles and spare parts shall be paid to the Director General of Disposals by the first party and the second party half and half."

Clause 6, 2nd para.

- (a) "The second party will appropriate the sale proceeds in the first instance against their half share of the purchase price till the same is fully realised.
- (b) And thereafter payment shall be made to the first party.
- (c) Provided, however, that if in any event the amount invested by the first party is not so realised in full, the second party shall bear half of such deficit and make that good to the first party."

Clause 2

"If funds of any of these parties are invested in the joint venture over and above their proportionate share of the purchase price, interest at the rate to be agreed upon between both parties from time to time will be payable to the party investing such extra funds."

The first party referred to in the agreement is Dalmia Jain Airways and the second, Allenberry.

In our opinion the first clause means just what it says, namely, that the purchase price was to be paid by the parties half and half. That in turn means that every time a payment was made each was to put up half the money. It does not mean that one side was to do all the paying and that the other was not bound to contribute anything till the first half of the price was fully paid by the other partner.

The clause about the repayment is a separate clause and bears no relation to the first. For example, say there had been no sales at all, the obligation to pay the Director General Disposals would still have remained and each party would still have been obliged to pay the price on the due date or dates.

Construed in this way no objection can be taken to the fairness of the first clause. The unfairness comes in when we turn to the second paragraph of clause 6 which deals with repayment. That gives Allenberry an undue advantage. If each side was to pay its contribution half and half it was unfair to provide that Allenberry should be repaid in full before a single repayment was made to the other partner; also that D.J. Airways should have to await its turn for an indefinite period, especially as it was not to receive any interest on the money it put up in the meanwhile. The fair thing would have been to provide that each would be repaid half and half in the same way as each was required to pay the purchase price half and half; or at the very least to make some provision for the payment of interest.

This is bad enough even as it stands. The unfairness is greatly intensified when we come to examine the meaning that Allenberry and the D.J. Group gave to these provisions; but we will deal with that later.

Three more provisions are, in our opinion, unfair. Under Clause 3 Allenberry was to do all the overhauling and repairing of the vehicles and was entitled to charge the joint venture for this work. No indication was given about the rates that could be charged; that left D.J. Airways at the mercy of Allenberry. We realise that no exact rate could have been fixed because different kinds of repairs are normally paid for at different rates. But a general clause saying that the rates would be 50% or 60%, or whatever it was, of the rates normally charged in the trade would have afforded some indication of the fact that the partner was to be treated favourably and not regarded as any other customer. A clause of that kind would also have afforded some sort of protection against possible exploitation.

The interpretation that Shanti Prasad Jain put upon this clause was that,

"Since no specific rate of charge was mentioned... Allenberry... was entitled to charge the joint venture at the rate or rates usually charged by Allenberry... to outside customers."

We think he is right because the normal rule of construction would be to read this clause along with clause 4 which provides that the rate shall be

"the rate usually allowed in the motor trade, that may be agreed upon between both the parties from time to time."

In our opinion this is doubly unfair both in clause 3 and in clause 4. In the first place it puts D. J. Airways on the same basis as any outside customer. It also makes provision for disregarding even that, in that it also provides for a rate.

"that may be agreed upon between both the parties from time to time."

This would have been alright if in fact there were two independent parties negotiating at arms length. But when we brush aside the pretence of independence corporate existence and get down to realities we find that the truth is that Shanti Prasad Jain is acting on both sides and that D.J. Airways is left completely at the mercy of the D.J. Group.

The same criticism applies to clause 4 and to clause 2 about interest. Clause 2 says that if the funds that either side invests in the joint venture exceed the proportionate share of the purchase price then,

"Interest at the rate to be agreed upon between the parties from time to time will be payable to the party investing extra funds."

Strip this of its subterfuges and we find it means that Shanti Prasad Jain could decide whatever he pleased. If D.J. Airways paid too much, he was free to decide, if he so wanted, that it should be paid, shall we say 2%; whereas, if Allenberry over paid, he could settle with himself that the public company should pay his private concern as much as 6% or even 8%.

Mr. Misra conceded that clause 4 is unfair as it stands, but he said that clause 3 is fair because Allenberry was entitled to charge for the working expenses. We agree that if that was the correct interpretation of the clause as it stands it would be unobjectionable. But, as we have shown that is not what it means; nor is it what Shanti Prasad Jain contended that it meant.

The legal right given to Allenberry under the clause is, not to charge merely its working expenses, but to charge the rates prevalent in the motor trade, that is to say, to treat D.J. Airways as any outside customer. That meant that Allenberry was entitled under the clause, not only to its expenses, but to *all* the profits. Had the profits gone to the partnership then Allenberry would have got only half.

Shanti Prasad Jain said that if the partnership had tried to do its own repairs then it would have had to run up, or rent, large premises and incur a large overhead and would have run into large losses. We are not convinced with this answer. It is based on guess work. The work could have been given to outsiders and the partnership would have been no worse off; and, with the element of competition present the partnership would probably have been able to get better and fairer terms. The unfairness lies in the fact that one of the partners gets a benefit for itself out of the partnership business when it is supposed to be contributing its skill and work to the joint venture. As between independent equals the parties could have done what they liked. But not in a case like this.

Now, Allenberry was to the working partner and was to contribute its skill and labour as its contribution to the partnership. But as the business of the firm only consisted of two things : (a) the reconditioning and the repairing and (b) the selling, if Allenberry was to be paid at the same rates as any outside firm what benefit did Allenberry contribute to the partnership?

In his arguments Mr. Misra conceded that clause 4 was unfair and could not be defended; but he said that the rest of the agreement was fair and normal. He also said that whatever the rights given to Allenberry under the agreement Allenberry did not extract its pound of flesh and that when it came to implement the agreement it waived its strict rights and acted in a scrupulously fair manner. We will deal with that later. At the moment we are considering the propriety of the agreement as it stands.

Shanti Prasad Jain contended that the agreement was more than fair; and S. N. Verma and that, if anything, it was weighted against Allenberry. He said that the executives of Allenberry were very much against the partnership but were overruled. The reason given for the fairness of the

terms that we have just examined was that D.J. Airways was only the financing partner and that as Allenberry had all the knowledge and the "know-how" and was going to do all the work and contribute its great reputation to the venture, it was more than generous of it to agree to contribute half the capital : it need not have contributed any at all and the arrangement would still have been fair.

In our opinion the position is not as simple as that; we will expand on that later. At the moment we decide that the proper legal interpretation of Ex. 36 is what we have said; and that we consider that the agreement was one-sided and unfair. Also that it exposed D.J. Airways to unjustifiable risks.

Now, that is bad enough; but the way in which the agreement was interpreted by Allenberry was even more detrimental to D.J. Airways. We get Allenberry's interpretation from the evidence of V. H. Dalmia who has not been contradicted by Shanti Prasad Jain in his written statement. V. H. Dalmia says that the arrangement was this :

1. *Allenberry was not to contribute anything at all initially. He said,*

"Under the agreement D.J. Airways was first to make the payment of their entire share to the Director General of Disposals and only thereafter Allenberry was to pay its half share."

2. *Allenberry's half share was to be paid as follows :—*

"Allenberry was to pay its half share only after the sales and out of the proceeds of the sales and not initially. That was the clear understanding and both parties acted on it."

This means that Allenberry was not to pay anything out of its own funds. The arrangement was that D.J. Airways was to pay the Director General of Disposals through Allenberry its half share amounting to Rs. 285 odd lacs. The vehicles in the meanwhile came into the possession of Allenberry for sale. After D.J. Airways had paid its full half share Allenberry would pay the other half *out of the sales of these vehicles*. In other words, it paid nothing out of its own pocket.

3. *This process was to continue till the whole of Allenberry's half of the contribution to capital was satisfied.*

At that point a stage would be reached when the Director General would have been paid in full. At that point Allenberry was to be treated as having contributed its half share in the capital in full and as having had its half share of its contribution to capital automatically returned to it.

4. *Only then (and not before) was a similar process to be employed regarding the return of the capital invested by D.J. Airways.*

Shanti Prasad Jain did not controvert this in his long and argumentative written statement. What he said was that Allenberry was entitled to do that under the terms of Ex. 36, therefore D.J. Airways did not suffer *because those were the terms to which it had agreed*.

We are accordingly right in holding that the interpretation that Allenberry gave to the terms of the agreement are as set out in the passages we have quoted from V. H. Dalmia's evidence.

We have pointed out that the provision for repayment was one-sided even on a strict legal interpretation of clause 1; but it becomes much more unfair when looked at in the light of the interpretation that Allenberry and Shanti Prasad Jain put upon it. According to them the agreement was that D. J. Airways should first pay its entire half share of the purchase price before Allenberry could be called on to contribute anything; and when it came to repayment Allenberry was to be repaid in full before D.J. Airways was entitled to a pie. Clearly the fair thing would have been to provide that he who pays first should be repaid first.

This unfairness is intensified still further when we find that Allenberry contributed nothing at all from its own funds.

We will first examine the documents that show when the Director General of Disposals was to be paid and by whom. In the case of all the purchases the liability was a joint one of D.J. Airways and Allenberry. So all the provisions for payment relate to the liability of the partnership and not to that of either partner individually.

Two documents were executed on 11-7-1946. Ex. 87 was one. It created a liability of Rs. 180 lacs which was to be paid as under:

Rs. 20 lacs on or before 12-7-1946 and the balance of Rs. 160 lacs on or before 12-9-1946.

Ex. 89, of the same date, created a liability for another Rs. 62 lacs which was paid the same day.

On 28-6-1948 the Rs. 62 lacs was raised to Rs. 91,32,500 (Ex. 90) but no date was fixed for payment of the difference, Rs. 29,32,500.

On 2-8-1946, Ex. 92, was executed and that created a further liability of another Rs. 250 lacs. This was to be paid as follows: Rs. 50 lacs on 1-8-1946 and thereafter Rs. 50 lacs on each of the following dates: 1-10-1946, 1-11-1946, 1-12-1946 and 1-1-1947.

On 11-9-1946 another purchase of Rs. 50 lacs (Ex. 94) was made, bringing the total purchases up to Rs. 571 lacs. Some payments were made by 11-9-1946, so Rs. 410 lacs were still left excluding Rs. 15 lacs for the R-3A Plant which had been taken out of the joint venture.

This exhibit consolidated the previous agreements and made the following provisions for payment of the Rs. 410 lacs then outstanding: Rs. 60 lacs to be paid by the end of September 1946 and Rs. 70 lacs at the end of each of the following five months. That is, the agreement was that the whole of the Rs. 410 lacs was to be paid/repaid by 28-2-1947.

The payments to the Director General of Disposals were made by Allenberry out of its own account with its banks. But it had a running account with D.J. Airways and from time to time D.J. Airways was made to transfer various sums of money to Allenberry's account as below.

Whenever a payment was made to the Director General of Disposals by Allenberry, Allenberry's Current Account in the books of D.J. Airways Ltd., was credited.

Up to 7-10-1946 Allenberry's account with D. J. Airways (in the books of D.J. Airways Ltd.) showed a debit balance of Rs. 1,85,45,000.

On 29-11-1946, Allenberry transferred Rs. 24,00,000 to the Universal Bank Ltd. This was done with a view to window dress the Statutory Report (Ex. 31).

On 6-12-1946, Allenberry was credited with Rs. 247 lacs towards payment to the Director General of Disposals.

On 7-12-1946, Rs. 1,42,85,218 out of the amount due from D.C.P.M. towards the share application money received by them as underwriters was transferred to Allenberry making the amount due from Allenberry, Rs. 3,04,30,218.

The balance due from Allenberry at the date of the Statutory Report (Ex. 31), i.e., 7-12-1946 was Rs. 57,30,218.

On 24-1-1947 the balance due from Allenberry increased to Rs. 61,58,261-6-8.

On 12-3-1947 the account of Allenberry was credited with Rs. 53,00,000 towards payment to the Director General of Disposals.

The above mentioned Rs. 53,00,000 was paid by Allenberry to the Director General of Disposals on the following dates :—

	Rs.
14-1-1947	23,00,000
6-2-1947	10,00,000
5-3-1947	20,00,000
	<hr/> 53,00,000

It will be seen from the above that—

- (i) from 15-1-1947 and up to 5-2-1947 Allenberry used Rs. 38,58,261 of D. J. Airways funds (difference of Rs. 61,58,261 less Rs. 23,00,000 paid to D.G.D. on 14-1-1947).
- (ii) from 6-2-1947 upto 4-3-1947 Allenberry used Rs. 21,58,261 of D. J. Airways funds, (difference of Rs. 38,58,261 less Rs. 10 lakhs paid to D.G.D. on 6-2-1947 and sundry payments of Rs. 7 lakhs).
- (iii) on 6-3-1947 only Rs. 1,58,261 was left with Allenberry (Rs. 21,58,261 less Rs. 20 lakhs paid to D.G.D. on 5-3-1947).

No interest appears to have been charged between 7-12-1946 to 31-12-1946 on the excess payment made by D. J. Airways to Allenberry which may come to round about Rs. 20,000.

On 12-3-1947 the balance due from Allenberry came down to Rs. 80,218-13-0.

Subsequently, Allenberry paid the following amounts to Director General of Disposals which were adjusted in the books of D. J. Airways to the credit of Allenberry on the following dates :—

<i>Date on which Allenberry paid</i>	<i>Amount</i>	<i>Date on which D.J. Airways account adjusted</i>
25-4-1947	9,00,000	25-4-1947
26-4-1947	21,00,000	7-5-1947
13-6-1947	10,00,000	14-6-1947
18-6-1947	11,00,000	25-6-1947
5-7-1947	15,00,000	28-6-1947
	<hr/> TOTAL	<hr/> 66,00,000

Thus the account of Allenberry was credited with Rs. 366 lakhs as below towards payment of the Director General of Disposals.

	Rs.
6-12-1946	247 lakhs
12-3-1947	53 lakhs
As stated above	66 lakhs
TOTAL	366 lakhs

Between 14-2-1947 and 28-6-1947 Allenberry made sundry payments to the extent of Rs. 18,81,554.

Thus the debit balance of Rs. 61,58,261 on 24-1-1947 was converted into a credit balance of Rs. 76,23,293 on 28-6-1947.

Balance due on 24-1-1947	Dr. Rs.	61,58,261
Amount paid to D.G.D. by Allenberry credited to its account in D. J. Airways' books (Rs. 53,00,000 + Rs. 66,00,000)	Rs.	1,19,00,000
Sundry payments	Rs.	18,81,554
		<hr/>
		1,37,81,554
Balance	Cr. Rs.	76,23,293

A contra entry was passed on 28-6-1947 for Rs. 80,33,750. Thus the accounts show that D. J. Airways has paid Rs. 2,85,66,250 towards the Director General of Disposals payments as shown below :—

	Rs.
As shown above	3,66,00,000
Less: Contra Entry	80,33,750*
	<hr/>
	2,85,66,250

*This is made up as follows:

Rs. 119 lakhs (Rs. 53 lakhs plus Rs. 66 lakhs)
 Less Rs. 38,66,250 (difference between Rs. 2,85,66,250
 Less Rs. 247 lakhs)

By virtue of this Contra entry the balance of Rs. 76,23,294 standing to the credit of Allenberry was converted into a debit balance of Rs. 4,10,456.

Interest (from 1-1-1947 to 30-6-1947) of Rs. 46,458 and profit of Rs. 12,21,627 from Disposal Account was debited and thus on 30-6-1947 the amount due from Allenberry in the books of D. J. Airways stood at Rs. 16,78,541.

Now turning to the payments that Allenberry made to the Director General of Disposals we find from Ex. 402 that only Rs. 280 lakhs were paid by 6-2-1947. Another Rs. 20 lacs was paid on 5-3-1947 and that brought the total up to Rs. 300 lacs.

D. J. Airways' share in the total Rs. 571 lacs due to the Director General of Disposals was Rs. 285 lacs. So the whole of this was paid by 5-3-1947.

Now, according to our interpretation of Ex. 36, Allenberry should have been matching each of D. J. Airways' payments to the Director General of Disposals with like payments of its own. Its omission to do so gave Allen-

berry an obvious advantage and put D. J. Airways to a corresponding disadvantage.

Shanti Prasad Jain's contention is that Allenberry was entitled to do this under the agreement, Ex. 36. We do not agree. Allenberry was not entitled to hold back its payments and let D. J. Airways do all the paying. It was bound to make *pari passu* payments.

Shanti Prasad Jain also says that if Allenberry was lucky enough to persuade the Director General of Disposals to give Allenberry easier terms, that was no concern of D. J. Airways so long as it was not saddled with interest because of the default. He said that D. J. Airways had to pay Rs. 285 lakhs under the agreement, and if Allenberry was able to persuade the Director General of Disposals to let Allenberry off with lighter terms when it came to Allenberry's turn to pay its half share that had nothing to do with D. J. Airways.

Again, we do not agree. The liability to the Director General of Disposals was a partnership liability, and if Allenberry was able to wrest an advantage for itself the benefit of that advantage should have gone to the partnership, because partners are bound to carry on the business of the firm to the greatest advantage and any benefit that is derived from use of partnership funds must be passed on to the firm.

It is clear that Allenberry was not in a position to pay from its own resources, for if it was, then it should have paid and not defaulted. It is clear that it derived an advantage from not being compelled to pay money from banks and pay interest.

On the other hand, if it was in a position to pay, then it had the use of the money of D. J. Airways up to 5-3-1947.

The advantage to D. J. Airways was that it derived no corresponding benefit from the partnership defaults. All the advantage went to Allenberry from contributing its half share up till 26-1-1947.

We have seen that under Ex. 94 the last instalment of the amount due to the Director General of Disposals should have been paid by 28-2-1947. There was a considerable balance still due.

Under another agreement, Ex. 425, was entered into regarding the total of the purchases was said to be Rs. 5,86,32,500. It included the Rs. 15 lacs for the R3-A plant. The balance was said to be Rs. 2,56,32,500. But that again includes the R3-A Plant. The amount due from the partnership was Rs. 256 odd lacs. Anyway, the entire Rs. 256 odd lacs was due from the partnership.

Payments were made for payment of the Rs. 256 lacs :

As no interest was charged it is obvious that Allenberry gained an advantage though Shanti Prasad Jain says it did not. His case is that in order to get this advantage Allenberry had to get a bank guarantee from the Bharat Bank and had to pay the bank a commission for the guarantee. That, however, is not quite as simple as it sounds, because a number of other conditions were also imposed.

One of these conditions was that the partnership should mortgage all its remaining stock of vehicles. Shanti Prasad Jain admitted that the granting of these instalments benefited Allenberry alone in the following passage in his written statement :—

"the commission for the bank guarantee was paid by Allenberry alone and Allenberry alone bore the burden of such commission since it was Allenberry which got the benefit of such instalments."

Therefore, this advantage, which benefited Allenberry alone, was obtained not merely by reason of the bank guarantee but also because Allenberry mortgaged joint property.

It must also be borne in mind that Ex. 425/24-29 makes the partnership liable for the entire Rs. 256 lacs due on 14-6-1947 when the document was executed. That includes the Rs. 15 lacs for the R3-A Plant. Therefore, Allenberry got the advantage of having its partner made jointly liable with itself because of a default committed by itself. It is obvious that better terms can be obtained when two persons are made liable instead of one.

Allenberry also obtained the benefit of the very considerable partnership payments that had been made in the past. According to Ex. 4 dated 14-6-1947, they totalled Rs. 3,30,00,000 because the document dated 25 states that the total purchases come to Rs. 5,86,32,500 and that a balance of Rs. 2,56,32,500 remained. It follows that there must have been a balance of Rs. 3,30,00,000 up to 14-6-1947. On that date there was a repayment of Rs. 10 lacs. So the total payments came to Rs. 340 lacs. (Ex. 425/24-29.)

These figures tally with Ex. 402 which is one of Allenberry's books. According to that, the payments made to the Director General of Disposals up to 14-6-1947 were Rs. 340 lacs, including the Rs. 15 lacs for the R3-A Plant.

The position about the R3-A Plant is this. It was bought by the joint venture for Rs. 15 lacs and was paid for by D. J. Airways on 11-9-1946, that is to say, D. J. Airways paid Allenberry and Allenberry paid the Director General of Disposals.

But, as Shanti Prasad Jain explained in his written statement.

"The said R3-A plant was, however, sold after its acquisition transferred by the said joint venture to Allenberry & Co. with the result that the total price payable out of the said joint venture to the D. G. Disposals was reduced to Rs. 5,71,32,500 and one half share of Rs. 2,85,66,250 and not the sum of Rs. 2,85,66,250 and not the sum of Rs. 2,93,16,250 as its half

share of the purchase price payable to the Director General of Disposals."

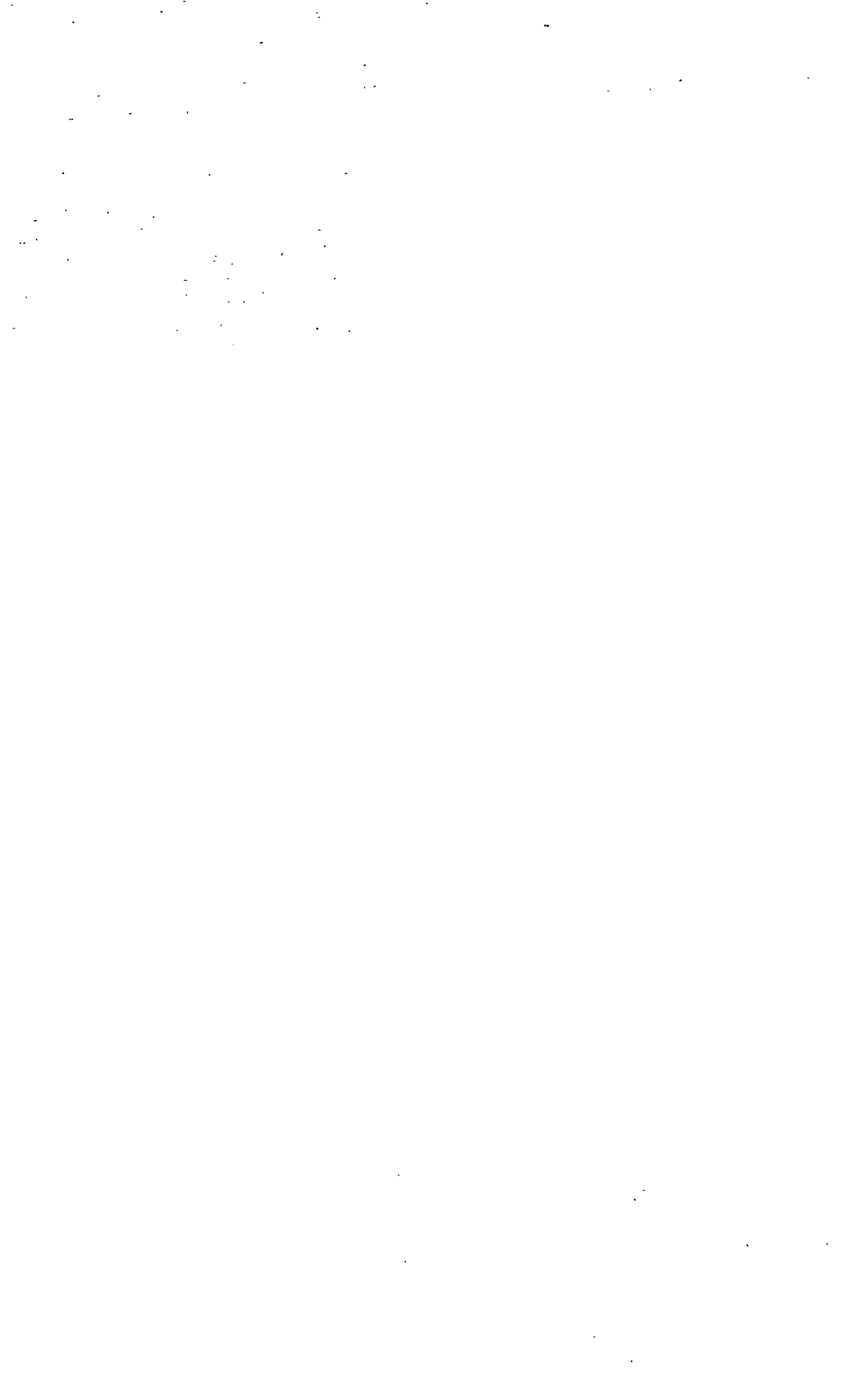
This is the basis on which we are proceeding and our calculations are based on that assumption.

That means that on 14-6-1947, D. J. Airways' contribution came to Rs. 2,85,66,250. When the Rs. 15 lacs are excluded from the figures in Exs. 425 and 402 the real payments on partnership account were Rs. 325 lacs. Therefore, on those figures, all that Allenberry had contributed towards the payment to the Director General of Disposals was Rs. 40 lacs.

We said in our Statements of Matters that D. J. Airways had overpaid its dues to the joint venture by a sum of Rs. 16,78,541-2-0. Shanti Prasad Jain pointed out that we had omitted to take certain factors into consideration and said that the excess was only Rs. 4,10,456-3-8. We agree that our calculations were wrong; but the exact figures do not matter. Looked at broadly there is no doubt that Allenberry obtained a benefit for itself from the use of partnership assets. How was that benefit passed on to the partnership? It must be remembered that this benefit had to be asked for because *Allenberry* defaulted in its obligation to the partnership by not paying up its half share of the capital in accordance with the terms of the partnership agreement. We are clear that the partnership got no benefit from this; nor does even Shanti Prasad Jain pretend that it did.

Looked at broadly there can be also no doubt that clause 1 of the agreement, Ex. 36, was worked for the advantage of Allenberry and against the interests of D. J. Airways. It was one-sided and unfair as an agreement standing by itself. The interpretation given to it by Allenberry and the D. J. Group was even more one-sided. The way in which it was worked in practice made matters still worse.

So far we have examined only the working of clause 1 relating to the contribution to capital. We will now pass on to clauses 3 and 4 and will see how they were worked out in practice. Here we agree with Mr. Misra that the working of these clauses was fair. So we confine our criticisms, so far as the *working* of the agreement goes, to clause 1.



CHAPTER II

THE R-3A PLANT

We will now turn to the R-3A Plant.

We find the following curious features about it :—

- (1) It was bought for Rs. 15 lacs from the D. G. Disposals on 28-8-46 (Ex. 93);
- (2) The purchase was by the joint venture and not by Allenberry alone;
- (3) The payment of Rs. 15 lacs made to the D. G. Disposals was on behalf of both partners and not on behalf of Allenberry alone;
- (4) D. J. Airways paid the entire Rs. 15 lacs;
- (5) The property was accordingly joint venture property and so the plant should have been entered as part of the joint venture stocks; but that was not done;
- (6) At some date after the purchase R. Dalmia and Shanti Prasad Jain decided that the Plant should be treated as the property of Allenberry alone;
- (7) We have been told conflicting and unsatisfactory stories about the date of this decision and about the date from which it was to take effect;
 - (a) S. N. Verma said that the decision was "immediate", that is to say it was on the date of the sale bill (Ex. 93), namely 28-8-46;
 - (b) Shanti Prasad Jain, without committing himself to any date, indicated that it must have been between 17-10-46 and Nov./Dec. 1946;
 - (c) The correspondence shows that the transfer could not have been reflected in the relevant records down to 26-9-47 (Ex. 116).
- (8) The audited balance sheets of Allenberry as at 31-12-46 (Ex. 250) does not show the R-3A Plant as part of the joint venture stock. This was signed by the auditors on 10-12-47.
- (9) The audited balance sheet of D. J. Airways as at 30-6-47 (Ex. 32) also does not show the R-3A Plant as a part of the joint venture stock. This was signed on 15-12-47.
- (10) As the payment of the Rs. 15 lacs is shown in the accounts as payment on behalf of the joint venture, and as no transfer was reflected in the books down to 26-9-47 (Ex. 116), it follows that the two audited accounts could not have been signed and

certified without including the R-3A Plant as part of the joint venture stock in the balance sheets as on 31-12-46 and 30-6-47 unless the auditors were shown manipulated accounts with ante-dated entries showing an ante-dated transfer before the close of the respective years.

We have seen that D. J. Airways was incorporated on 9-7-46 and that purchases to the extent of Rs. 2,42,00,000 were concluded on 10-7-46. Negotiations for the purchase of the R-3A Plant were proceeding at the same time. We get this from a letter that Shanti Prasad Jain wrote to the Examiner of Capital Issues on 12-7-46 (Ex. 99). He there gave the following description of the plant :

1. Its capacity was in the neighbourhood of being able to recondition 80 to 90 trucks a day;
2. "After 5 years, with the road development that is proposed in this country the plant will easily get about 30,000 trucks per year for reconditioning and, if half the business is done on sale and purchase basis and half on repairs charge basis and if we consider the price of the reconditioned truck or car about Rs. 3,500 the total return of the sale and purchase basis will be about Rs. 4½ crores."

The purchase of this plant was effected on the 27/28th August 1946 as a partnership purchase. The sale letter (Ex. 93) is in the name of both companies. This is also clear from Ex. 100 dated 17-10-46 in which D. J. Airways say that *they* have purchased the R-3A Plant for Rs. 15 lacs. This is an application to the Examiner of Capital Issues. It says,

"We, in cooperation and partnership with M/s. Allenberry & Co. Ltd. have purchased from the Director General of Disposals, *motor vehicles* of the value of Rs. 2,79,32,500.

* * *

We have also purchased spare parts worth Rs. 50 lacs and R-3A Plant for Rs. 15 lacs for which we got sanction as per our last application."

The entire Rs. 15 lacs was paid by D. J. Airways alone on 11-9-46, or at any rate before 31-12-46. This is evident from two letters of Shital Prasad Jain (Ex. 259A dated 31-12-46 and Ex. 106 dated 16-7-47). Shital Prasad Jain says in his letter Ex. 259R written to Shanti Prasad Jain,

"As intimated to you on your second visit to Delhi, *Dalmia Jain Airways* have taken payment for Rs. 2,27,00,000 made to the *Director General Disposals* including spare parts and R-3A Plant *in their account*."

Shital Prasad Jain's letter also makes it clear that D. J. Airways paid for the R-3A Plant.

When we say that D. J. Airways paid for the plant we mean that the money eventually came from the funds of D. J. Airways. The initial payment, as in all cases, was by Allenberry out of its own bank account, but this payment was recouped from D. J. Airways within a few days and so, in substance, the real payment was by D. J. Airways; anyway, the payment to the D. G. Disposals was a joint payment on behalf of both parties.

These letters corroborate V. H. Dalmia who told us that the plant was intended to be used for the joint venture. Shanti Pd. Jain also admits that that was the case.

The payment was made on 11-9-46. We get this from a statement of account (Ex. 402) showing the amounts paid on various dates to the Director General of Disposals against the Joint Disposal Vehicles Business with *Dalmia Jain Airways*. These were payments as under up to 9-12-46 :

											Rs.
18-7-46	..	..	..	..	..	..	..	..	..	..	82,00,000
28-8-46	..	..	..	..	..	..	..	..	..	..	50,00,000
3-9-46	..	..	..	..	..	..	..	..	..	..	25,00,000
11-9-46	..	..	..	..	..	..	..	..	..	..	15,00,000
7-10-46	..	..	..	..	..	..	..	..	..	..	60,00,000
6-12-46	..	..	..	..	..	..	..	..	..	..	5,00,000
9-12-46	..	..	..	..	..	..	..	..	..	..	10,00,000
											<hr/> 2,47,00,000 <hr/>

We have seen above that Shital Pd. Jain said in Ex. 259 that the Rs. 2,47,00,000 included the price of the R-3A Plant, and, as the price of that was Rs. 15 lacs, it is reasonable to conclude that the Rs. 15 lacs referred to in the statement set out above refers to the R-3A Plant.

There can, therefore, be no doubt that the purchase was a joint purchase and that D. J. Airways alone footed the bill on behalf of the Joint Venture and paid the money on 11-9-46. The property was therefore clearly joint venture property and should have been entered in the books as part of the joint venture stock; but that was not done.

Now this plant was an exceedingly valuable one. As we have seen, Shanti Pd. Jain estimated that it could easily recondition 30,000 trucks a year; and apart from that, there is a speech made by him on 27-2-47 where he said that there were very few like it outside America. (Ex. 188).

Whether that was the reason or not R. Dalmia expressed an opinion some time before 31-12-46, that the plant should be kept as Allenberry's exclusive property (Ex. 259-R).

S. N. Verma and Shanti Pd. Jain say that the value of the plant was not as great as Shanti Pd. Jain had expected and that, soon after its purchase, they thought it would be more convenient and economical all-round if Allenberry took over the plant for itself.

When we drew up our statements of matters we thought that this was for fraudulent reasons; but now that we have heard Shanti Pd. Jain's version and the evidence adduced by him we feel we cannot justify a charge of fraud. But the circumstances disclosed certain irregularities such as ante-dating and an omission to show the transfer in the books at the proper time; so we now confine our charge to that.

If the matter had stood by itself we would have dropped it from consideration, but we feel that incidents of this kind serve to illustrate the casualness with which the funds of public companies were treated. In this particular instance we have not been able to unfathom a fraudulent purpose; but the slackness and irregularity that we have unearthed show how easy it was to bring about large scale frauds in other matters. It exposes their

system of book-keeping and shows the mental attitudes of those who were in charge of the books, and their indifference to veracity and strictness in matters of accounting.

The position is a curious one and *we have not told the truth.*

Shanti Pd. Jain and S. N. Verma say that the value of the plant was not as great as Shanti Pd. Jain had expected and so, according to Shanti Prasad Jain in his written statement, it was decided "soon after the purchase" that the purchase "should be treated" as having been purchased exclusively for Allenberry & Co. instead of the joint venture.

He did not commit himself to anything more definite in the way of a date; "soon after the purchase" was all he was prepared to say. But he did go on to give a reason for the decision.

He said,

"Considerable amount was also necessary for the working capital required for operating the said R-3A Plant. D. J. Airways was refused sanction for the issue of further capital to the extent of Rs. 3,00,00,000 for which D. J. Airways had applied to the Examiner of Capital Issues on 17-10-46 (Ex. 101) for enabling D. J. Airways to finance the purchase of disposal vehicles purchased under the said sale not dated 2/7 August 1942 (Ex. 92). *Having regard to the aforesaid difficulties* the matter had to be reconsidered in the *light of these circumstances* and it was felt that it was in the interest of both Allenberry and D. J. Airways that the said R-3A Plant should be treated as having been purchased exclusively by Allenberry."

Therefore it is clear that, according to Shanti Pd. Jain the decision to effect the change was taken *after* the Examiner of Capital Issues had turned down their applications for the issue of a further 300 lacs capital.

The application for this was made on 17-10-46, therefore, according to Shanti Pd. Jain the decision to effect the transfer was *after* 17-10-46 but before Nov./Dec. 1946 because, according to him, Allenberry opened an account with the Bharat Bank in the name of "Allenberry & Co. Ltd. (Reconditioning and Assembling Plant)".

Now, S. N. Verma (W. 50) gives us a totally different version. He says that the decision was taken then and there *when the plant was purchased* and that no time elapsed between the purchase on 28-8-46 (Ex. 93) and the *decision* to transfer it to Allenberry. The actual *delivery* of the plant was not made by the D. G. Disposals till October 1946, but, according to him, the *decision* about the transfer was taken then and there.

He was asked,

"What interval of time was there?—first it was joint property and then it became separate property."

He replied,

There was no lapse of time. It was decided that the R-3A Plant should be sold to Allenberry, this is on the same day. *The same day* when the sale note was received."

He also said that he was the one who suggested to R. Dalmia that Allenberry should take over the plant :

"Immediately after the purchase of the R-3A Plant and after I had examined the plant in the company of our technical advisers I suggested to Mr. R. Dalmia that the purchase should be allocated entirely to Allenberry."

Then he said, in answer to a question of Mr. Shah asking whether his advice was accepted by the management,

"Yes, my advice which was supported by Mr. Brown and the other technicians of our company was accepted by Mr. Dalmia."

Both these stories cannot be true. Either, one of these two gentlemen is not telling the truth or neither is disclosing the full facts. If S. N. Verma is telling the truth then it was wrong to pay the D. G. Disposals out of the joint venture funds and charge it to the joint venture account as late as 11-9-46.

We are not impressed with Shanti Pd. Jain's statement that an account was opened with the Bharat Bank in the name of Allenberry alone in Nov./Dec. 1946. From first to last Allenberry had no separate joint venture account in any bank. It mixed all joint venture moneys with its own and merely kept a separate account in its own books. Allenberry would have worked the R-3A Plant in any case whether the ownership resided in the joint venture or in Allenberry alone; and, as the plant was not received from the D. G. Disposals till October, and as we were told that it took time to get it into working shape, there is nothing improbable in Allenberry having opened a separate account for the R-3A Plant in Nov./Dec. 1946.

Having seen what Shanti Pd. Jain and S. N. Verma had to say about the decision to transfer the plant to Allenberry we will now see what the documentary evidence reveals.

The earliest inkling that we get of the decision to treat the plant as the property of Allenberry is in Shital Pd. Jain's letter (Ex. 259R) written to Shanti Pd. Jain on 31-12-46.

After setting out that the payment was by D. J. Airways he said,

"Sjt. R. Dalmiaji was of the opinion, however, that we may keep the R-3A Plant.....In account of Allenberry & Co."

Then he continued,

"The release letter from the Director General of Disposals, New Delhi, for that plant is also, however, in the joint names of Allenberry and Dalmia Jain Airways. Please, therefore, let me have your instructions if Allenberry, Dalmianagar, may credit Rs. 15 lacs in respect of this plant to Dalmia Jain Airways and debit automobile section Calcutta."

After this, a credit advice dated 1-1-47 for Rs. 2,93,16,250 lacs was sent to the Bharat Bank (See Ex. 108). This was on the assumption that the R-3A Plant was still joint venture property and that D. J. Airways was to foot the bill. If the R-3A Plant had already been taken away by Allenberry the Rs. 2,93,16,250 would have been reduced to Rs. 2,85,66,250 lacs.

In a later letter (Ex. 160), dated 16-7-47, Shital Prasad Jain, writing to J. M. Gupta, reminded him that half the cost of the R-3A Plant was payable by Allenberry and half by D. J. Airways and told him to adjust his accounts on that footing. A copy of the letter was sent to D. J. Airways and they were told to.

"arrange the entries accordingly."

Now Shital Prasad Jain could not have made the decision on his own. We have seen from his letter of 31-12-46 (Ex. 259 R) written to Shanti Prasad Jain that he had heard about the decision to keep the plant as Allenberry's exclusive property and so wanted to know who was to pay for it. When therefore, he told J. M. Gupta on 16-7-47 (Ex. 106) that the two companies were told to pay for it half and half, it could only have been on instructions received from Shanti Prasad Jain. We refer, in particular to the following statements made by S. N. Verma,

- (1) The accounting part of the joint venture was under the supervision of Shanti Prasad Jain;
- (2) "I do not think that any directions that were given by Shital Prasad Jain would be followed at that time without reference to Shanti Prasad Jain."

When therefore, we find that a reference was made, and when we find that Shital Prasad issued directions contrary to what would have been normal if the purchase was to be regarded as by Allenberry alone, it is reasonable to infer that the directions came from Shanti Prasad Jain.

It also follows from this that whatever may have been the vague ideas floating through their minds at that time the actual decision to effectuate the transfer and pay for it, had not been reached by 16-7-47. We wish to stress that the transfer could not have been effected unilaterally by Shanti Prasad Jain expressing a wish to that effect.

After receiving Shital Prasad Jain's letter (Ex. 106) J. M. Gupta wrote to Shanti Prasad Jain on 22-7-47 (Ex. 107) and sent a copy to Shanti Prasad Jain. He said that D. J. Airways *had already paid* its half share in the total payable to the Director General of Disposals. The total included the Rs. 15 lacs for the R-3A Plant; and he added that he had brought this to the notice of R. Dalmia. Therefore, both Shanti Prasad Jain and R. Dalmia knew that this had been entered as a joint venture purchase in the accounts and that D. J. Airways had paid the money on 11-9-46; also that there had been no change in the accounting position up to that date *i.e.* 22-7-47; also that J. M. Gupta, one of the directors of D. J. Airways, knew nothing about the transfer even as late as 22-7-47.

We will digress for a moment to examine how a transfer can be effected and how it cannot. It could not be effected by the mere expression of a wish or desire by R. Dalmia who was not a director of either company at that time. It is a mutual transaction. There has to be a transferor and a transferee and there has to be an outward and visible act signifying the mental intent; there must be some writing, or at the very least a symbolical handing over of possession. That can be evidenced in various ways. One of them could be an entry in the books of accounts; but whether that is the method selected or not a transfer of this magnitude would have to be entered in the accounts very shortly after it was made.

Now in the case of a company, only the directors can make the decision to sell. Shanti Prasad Jain and J. M. Gupta are the only persons who are shown to have been associated with the purchase of the plant from the Director General of Disposals. But it is evident from the letter we have just quoted (Ex. 107) that J. M. Gupta knew nothing about the transfer though he was a director.

But to get back to the correspondence, Shital Prasad wrote to the Chief Accountant of the Bharat Bank on 26-9-47 (Ex. 116). He reminded the Chief Accountant that "*previously*" the idea had been to divide the cost of this plant (along with other things) half and half, and said,

"but *since then* it has been decided by Sjt. S. P. Jain that the reconditioning plant may be *solely* kept in *Allenberry* as desired by Sjt. R. Dalmia."

Shital Prasad therefore directed the Chief Accountant of the Bharat Bank to correct his entries accordingly.

Now when Shital Prasad Jain wrote this letter (Ex. 116) on 26-9-47 and said that "*since then*" it has been decided etc. he must have had in mind the instructions which it is reasonable to assume he received in answer to his letter (Ex. 259R) dated 31-12-46, and also the letter that he wrote to J. M. Gupta on 16-7-47 (Ex. 106). Therefore, the decision that he speaks of must have been reached after 16-7-47 and before 26-9-47. That in turn means that the transfer had not been effected and reflected in the books up to 26-9-47.

It is quite clear then that up to that date, 26-9-47, the transfer had not been reflected in any of the accounts either of the joint venture, or of D. J. Airways, or of Allenberry.

We will now examine the stock position in the balance sheets. We find that this plant was never recorded as part of the joint venture stock; and Shanti Prasad Jain relies on that to show that it was decided at a very early date not to treat the plant as joint venture property.

The earliest document that reflects the transfer is the audited balance sheet of *Allenberry* as on 31-12-46 signed on 10-12-47 (Ex. 250). This values the joint venture stock at Rs. 5,41,11,219-1-0.

Now we know from Exs. 87, 89 and 92-94 that the total purchases on behalf of the joint venture up to 31-12-46 amounted to Rs. 5,86,32,500.

The value of the Joint Venture Stock should therefore have been Rs. 5,56,11,219, that is to say, the price of the purchases, Rs. 5,86,32,500 less the cost of sales, Rs. 30,21,281. (Ex. 58 and 250).

But the balance sheet, Ex. 250, puts it at only Rs. 5,41,11,219. This is the figure we reach if we exclude Rs. 15 lakhs from the earlier total.

We reach the same position when we examine Ex. 32, the balance sheet of *D. J. Airways*, as at 30-6-47. This states that the stock in trade, at cost, of *D. J. Airways* in motor vehicles and spare parts (no mention of the R-3A Plant) value Rs. 2,85,660. We have seen that the total value of the purchases from the Director General of Disposal come to Rs. 5,86,32,500. If the price for the R-3A Plant (Rs. 15 lakhs) is excluded from that figure, then the balance becomes Rs. 5,71,32,500. *D. J. Airways*

half share in that comes to Rs. 2,85,66,250; and that is the figure shown in Ex. 32.

Two points are therefore clear,

- (1) that the correspondence shows that down 26-9-47 the transfer had not been reflected in any books of account;
- (2) that the balance sheets show that the plant was never entered as part of the joint venture stock.

These two sets of documents lead to contrary conclusions. That is one of the reason why we say the accounts were manipulated.

We will now deal with the question of ante-dating.

The books of D. J. Airways were destroyed when it was discovered that an investigation into the affairs of D. J. Airways was afoot. The books of the joint venture were kept by Allenberry, and Allenberry's own books, including those of the joint venture; are still in existence. But, except for those that were seized by the Special Police Establishment, the Commission has not been allowed access to the rest. However, such material as we have, shows that the books were manipulated and that the date of the transfer was ante-dated. If the rest of the books, which have not been shown to us or produced, had shown a different picture it is evident that they would have been produced. We are therefore justified in founding on the basis of the materials that is with us.

We have already pointed out that a transfer of property belonging to a public company cannot be effected by the mere expression of a wish by R. Dalmia who was not a director of either company at that time; nor can it be effected by the concurrence in that wish by a single director who is himself personally interested and interested, in addition, as a director of the transferee company; and indeed interested as the one who was in real, immediate and effective charge and control of the joint venture business of Allenberry.

Shanti Prasad Jain said in the written statement² that,

“the decision was arrived at by *mutual agreement* between Allenberry, and....and Dalmia Jain Airways....soon after the purchase.....and.....it was decided by *mutual agreement* between Allenberry.....and Dalmia Jain Airways.....that the said R-3A Plant should be treated as having been purchased by Allenberry instead of the said joint venture.”

Shanti Prasad Jain and J. M. Gupta are the only directors of D. J. Airways who are shown to have been associated with the original purchase (Ex. 93). It is evident from J. M. Gupta's letter dated 27-7-47 (Ex. 107) that the transfer had not been effected up to 22-7-47 and that no entries had been made in the accounts reflecting the transfer; also that J. M. Gupta knew nothing about it. His evidence carried the matter no further.

J. Dalmia was also a director, but neither he, nor Shanti Prasad Jain, say that he had anything to do with his deal; nor do they suggest that he represented D. J. Airways; and in any case he was also interested as a member of the D. J. Group.

R. K. Jain was the only other director. Neither he, nor Shanti Prasad Jain say that he had anything to do with this deal or that he represented D. J. Airways. He said in his written statement,

"I deny all knowledge of the allegations regarding the transfer of the R-3A Plant and the ante-dating of the agreement relating to the transfer. . . . I had no hand in and was no party to the transfer of the plant."

No evidence has been adduced to indicate the contrary.

Issues Nos. 24 and 25 raised this matter specifically, so if either J. M. Gupta or R. K. Jain had acted for D. J. Airways, Shanti Prasad Jain would have led evidence to show that; or at the very least would have said so himself.

We are therefore reduced to Shanti Prasad Jain acting on behalf of both companies. This high sounding talk of "mutual agreement" therefore turns out to be nothing more than a smoke screen to hide the fact that Shanti Prasad Jain, acting for D. J. Airways, agreed with himself on behalf of Allenberry: a very convenient kind of "mutual agreement" when handling the moneys and property of a public company.

If this sort of thing is the inevitable result of group control as Mr. Misra said in another connection, then it seems to us that provision will have to be made for independent protection for such controlled companies. When it was argued that the same sort of thing had happened when the joint venture was started and that no meeting of the Board of Directors was called to decide about the partnership, Mr. Misra said, what difference would it have made whether a meeting was called or not: the conclusion would have been the same. The directors would just have nodded their heads and would have done what R. Dalmia and Shanti Prasad Jain told them to do. That being the case, he said that they would obviously have gone through the farce of having a meeting if only to cover up their own tracks and to be able to use the meeting as a shield against possible criticism. But that is one of the very abuses that we say has been taking place in the management of these companies. Even when the outward forms of the law are observed they are twisted and abused to accomplish improper ends.

We have also seen that no transfer had been reflected in the account books down to 26-9-47; and yet we find that the plant was not entered as part of the stock of the joint venture in any of the balance sheets.

The audited balance sheet of *Allenberry* as at 31-12-46 was signed by the auditors on 10-12-47 and that of D. J. Airways as at 30-6-47 (Ex. 32) was signed on 15-12-47. It is evident that the auditors could not have signed and certified these balance sheets unless they had been shown entries indicating a transfer in either of those two accounting periods. But, as the correspondence shows that there was nothing to indicate this in this accounts up to 26-9-47, which is outside both accounting periods, it must follow that the accounts had been manipulated some time between 26-9-47 and 10-12-47 so as to show a transfer before 31-12-46.

Shanti Prasad Jain relies on the balance sheets. But balance sheets are based on the accounts. If nothing else were known it would be proper to infer that the material for the conclusions that are found in the balance sheets must have been present in the accounts; and we have no doubt that it was when the auditors saw the accounts, otherwise they could not have

given the certificates that they did. But the other documents show that the materials must have been inserted in the books after 26-9-47 to show an ante-dated transaction. As this is by no means an isolated instance of manipulation it is legitimate to draw adverse inferences when the books that would have revealed the whole picture have been deliberately kept away from us.

Shanti Prasad Jain tried to explain this way by saying,

"It must be remembered that Shri Shital Prasad was an accounts officer stationed at Dalmianagar, and he had no personal knowledge as to when and how it was decided that the said R-3A Plant should be treated as having been purchased exclusively by Allenberry... instead of the said joint venture. The said decision was arrived at in Delhi when Shri Shital Prasad was not present and he did not know as to when and how the decision was arrived at."

This is a favourite excuse and is used whenever documents disclose unpleasant facts. What has not been explained is,

- (1) Why those who were in charge of the accounts were not told about a transfer of this magnitude at the proper time, especially when Shanti Prasad Jain was supervising those very accounts;
- (2) why Shanti Prasad Jain's co-director, who was so closely linked up with the initial purchase from the Director General of Disposals, was kept in the dark, especially as he was also handling some part of the accounts, as his letters show; and
- (3) why, when Shital Prasad Jain asked Shanti Prasad Jain on 31-12-46 (Ex. 259R) whether Allenberry should pay D. J. Airways for the plant he was not told that of course that must be done, but was directed instead to carry on on the basis that the property was still joint venture property; in consequence of which he told J. M. Gupta as late as 16-9-47 (Ex. 106) to adjust his accounts on the basis that D. J. Airways and Allenberry were to pay for the plant half and half.

For these reasons we are not satisfied with the explanation that Shanti Prasad Jain has given.

There is one other matter to which it will be necessary to refer.

Shanti Prasad Jain relied on a speech that he made at the Annual General Meeting of the shareholders of Allenberry at Dalmianagar on 27-2-47 (Ex. 188). He said there,

"Your company is fortunate in having been able to get the most modern reconditioning plant which is the only one of its kind and it is claimed that there are only a few of its kind outside America. It has been added to the vast equipment owned by your company."

He said that this showed that the decision to treat the plant as Allenberry's exclusive property was made before that date.

We have also relied on that speech, and also on Shanti Prasad Jain's letter Ex. 99, dated 12-7-46 to the Examiner of Capital Issues to prove the

great value of the plant and the impropriety of transferring it at cost to one of the partners. He had extolled the plant in high terms, and to the Examiner of Capital Issues he entered into working details to show how very valuable it was. Before the shareholders he spoke in more general terms but nevertheless he indicated its great value and said that it was a "most modern reconditioning plant." Mr. Shah said that the speech was not to be taken seriously : it was just general puffing.

But apart from what Mr. Shah said, this is what Shanti Prasad Jain said of himself,

"It must be remembered that the said speech...was intended not only for the shareholders...but also for the potential buyers of disposal vehicles and stores...Under the circumstances it was natural that Shanti Prasad Jain should have used some highflown and exaggerated words in the said speech, and such language cannot be taken too literally...it would be an exaggeration to say that the said R-3A Plant was the most modern reconditioning plant in Asia."

We take it that Shanti Prasad Jain's view of commercial morality is that it is justifiable to give shareholders exaggerated and incorrect impressions about the value of their assets provided the intention is that the words should reach a wider public. But this explanation cannot apply to the eulogistic terms in which the plant was extolled to the Examiner of Capital Issues. Anyway, what Shanti Prasad Jain said about the ownership of the plant is not borne out by the letters and by his own conduct.

There is one other criticism that we wish to make. It is proved, and was admitted by counsel in the arguments, that the transfer was made "at cost". In view of Shanti Prasad Jain's statement we felt that the plant was worth much more than the Rs. 15 lacks that D. J. Airways paid on behalf of the partnership. We felt therefore that there must have been some dishonest motive in the ante-dating and the manipulations that we have set out above, and that the motive was to make the partner pay, and then, when its true value was discovered, to take it off the partner's hands "at cost", thus getting the benefit of the deal for Allenberry alone once the value of the plant had been proved. As we have said, we do not feel we can justify such a charge after hearing Shanti Prasad Jain's case. But, all the circumstances taken together leave an uneasy suspicion in our minds that all was not above board; and we feel that here again was a case where D. J. Airways should have been allowed independent advice, and that it was against honest commercial practice to have proceeded in this hole and corner manner by.

- (a) pretending that there had been "mutual agreement" when in fact there was none;
- (b) in publicly making misleading and untrue statements about the value of the property knowing that the statements were misleading and untrue, for the purpose of misleading a gullible public and the Examiner of Capital Issues;
- (c) in ante-dating and manipulating accounts; and
- (d) In showing auditors these manipulated accounts and thus inducing them to give incorrect certificates.

The persons responsible are R. Dalmia and Shanti Prasad Jain because, according to the evidence the accounts could not have been manipulated in this way without the knowledge and concurrence of Shanti Prasad Jain, and because R. Dalmia was in overall charge and there is evidence to show that nothing could have been done without his knowledge and concurrence.

The other directors are J. Dalmia, J. M. Gupta and R. K. Jain. None of them is shown to have been directly concerned either with the transfer of the plant or with the ante-dating; nor have we any evidence to indicate that they knew anything about either. But they cannot escape their responsibility as directors.

So far as the ante-dating is concerned, if they did not know what was happening it would be unreasonable to hold that they ought to have known just because they were directors. That sort of thing could have been done without their knowledge. They knew that Shanti Prasad Jain was in charge of the accounting section of the joint venture and that the joint venture was his special responsibility; and if, coupled with that, they saw balance sheets certified by the auditors it would not be reasonable to expect them to suspect dishonesty or fraud and go deeper into the matter.

But we are not able to take the same view of their responsibility in regard to the transfer, whenever it took place. That was a big matter and the plant was a large and costly one. One of their co-directors, the man in direct charge had publicly extolled the plant to the skies and had expatiated on its value. He may or may not have been right; but when it came to a case of letting a plant that had been publicly acclaimed as a most valuable asset go at cost price, it was their duty to have looked into the matter and to have decided for themselves whether that was proper. If, after enquiring into the facts they had honestly, but not negligently, reached a wrong conclusion, no blame would have attached to them. Where we think they failed in their duties as directors was in not keeping themselves informed about what was happening to such a very valuable item of their company's assets; for, even if the plant was not worth more than Rs. 15 lacs that was paid for it, it was still a valuable piece of property. To that extent we feel they were negligent in the performance of their duties as directors.

In our opinion it is a clear disregard of honest commercial practice to remain on as directors of a company and not to care or to know when property of this value is being transferred, and for what price and whether the transfer is justified or not.

CHAPTER III

THE 2323 VEHICLES

We will now consider the case of the 2323 vehicles.

These vehicles formed part of the joint venture stock. They were bought from the Director General Disposals for the joint venture and were paid for, along with the other disposal vehicles, by D. J. Airways out of its own funds, that is to say, though Allenberry paid for the vehicles by cheques drawn on its own account, it recouped the money from D. J. Airways. Allenberry contributed nothing out of its own funds. Allenberry then sold these 2323 vehicles retail to various customs on various dates on behalf of the joint venture, but later, Allenberry made out that it had sold them on behalf of D.C.P.M., and made out a statement (Ex. 131) in favour of D.C.P.M. showing sales as at 31-12-47 for Rs. 1,02,62,705-1-6. A sum of Rs. 1,02,62,705-1-6 was transferred as of the same date from the joint venture sales account to that of D.C.P.M. in Allenberry's books.

These vehicles did not belong to D.C.P.M. They belonged to the joint venture; nor were they sold on behalf of D.C.P.M. They were sold on behalf of the joint venture; but in order to make it appear that the 2323 vehicles actually belonged to D.C.P.M. and were later sold on its account, the accounts were fraudulently manipulated.

The fraud was effected in three stages. First, a fictitious sale bill (Ex. 130) showing a sale of 2323 vehicles to D.C.P.M. was forged and ante-dated. That purported to transfer the ownership in the vehicles to D.C.P.M. as from 28-2-47. Next, the accounts were manipulated so as to show the transfer of the sale proceeds (received or receivable from the third parties to whom the vehicles had actually been sold) from the joint venture account to the account of D.C.P.M. These entries were also ante-dated. Then thirdly, the accounts were audited as manipulated and passed by easy going auditors.

An indication of how the audits were made in some of the companies belonging to the D. J. Group can be seen from the following correspondence. The Dalmianagar D.C.P.M. accountant wrote to the head office at Delhi on 23-3-49 (Ex. 363/P. 240) and said that certain vouchers were urgently required "as auditors are expected to come in a day or two".

The answer from Delhi given by S. N. Dudani on 5-4-49 (Ex. 363/P. 239) was,

"Your auditors should not bother very much about it, because they would be clearly giving in their report that Balance Sheet has been drawn in which are incorporated certified copies of the branches."

This correspondence related to one of the D.C.P.M. audits but the same pattern is found in the audits of Allenberry, of D. J. Airways and of the joint venture between Allenberry and D. J. Airways. The auditors neither saw nor asked for the original vouchers from the branches but were satisfied

with mere authenticated returns sent by the branches; and in the case of the joint venture (where Allenberry did the actual selling and kept the original vouchers) with a mere certificate from Allenberry. This is evident from the following documents.

Allenberry had a number of branches but the audit was only at the head office in Calcutta. The auditors were Messrs. Khandelwal & Co. and their certificates in each of the following balance sheets were as below:—

“We have audited the Balance Sheets etc. . . . with the *head office* accounts and vouchers, *in which* are incorporated the *certified returns* from branches.”

The Balance Sheets in which this certificate was given are

Ex. No.	As at
84	30-6-46
250	31-12-46
63	30-6-47
265	31-12-47
65	31-12-48
66	31-12-49

The auditors did not see the original vouchers etc. relating to the sales but only the authenticated returns sent in by the branch offices.

The same pattern was followed in the case of the joint venture accounts. The sales were made by Allenberry at Calcutta but the audit was at the head office in Delhi. It was conducted by Messrs. Sodhbans & Co. Their certificates were to this effect,

“We have audited the Profit and Loss account etc. . . . with the books, accounts and vouchers *in which* are incorporated *certified returns of Allenberry.*”

This was the certificate given in the following audits:—

Ex. No.	For half year ending
58	31-12-46
59	30-6-47
60	31-12-47
61	30-6-49

Sodhbans was questioned about this as W. 2. He admitted that his firm had not seen the original vouchers and that Exs. 58 to 61 were based “on the *copies* of the *statements* sent by Allenberry to D. J. Airways”.

The same firm were the statutory auditors of D. J. Airways. The certificates are incorporated in Exs. 32 to 35. The pattern is similar and Sodhbans admitted in the witness box that

“The question of checking D. J. Airways accounts is confined to checking whether the *statements* supplied by Allenberry are copied in the books of D. J. Airways.”

No wonder S. N. Dudani was airily able to tell the branch office accountant not to worry about such trifles as vouchers because the auditors would not want them and would be satisfied with mere *statements*.

But to get back to the 2323 vehicles. Observe Allenberry's practice regarding the sales of disposal vehicles. Observe first the general practice

because in the case of these 2323 vehicles there was a departure: the only instance of such a departure in the whole of the joint venture period except in the case of another purported sale to D.C.P.M. on the same date of Pipeline and fittings; we will examine that under the heading "Drums & Pipe Section".

Allenberry's practice was this. It kept physical possession of the entire joint venture stock including these 2323 vehicles. It was also in control of all the sales. Whenever it sold a disposal vehicle it debited the sale amount to the Customers' account. This money did not go into a separate partnership account but went straight into Allenberry's general account and all that the partner, D. J. Airways, got were credit entries in ledgers and so forth in Allenberry's books. As these moneys were not separated off from Allenberry's own funds and kept in a separate bank account, Allenberry had the use of the money until it chose to hand it over to somebody else.

Stripped of all frills what did this practice mean? It meant first, that the D. J. Group secured cash from the shareholders of D. J. Airways when the shares were issued. The Group then used this cash through the instrumentality of Allenberry for purchasing these 2323 and other disposal vehicles; in other words, the cash was turned into something even more valuable namely, the vehicles. As soon as the vehicles were procured Allenberry kept them in its own possession. (The importance of this will be seen when we come to the winding up of the joint venture). Then, when it sold the vehicles from time to time to customs it again received cash from them in return, only more of it than before because the vehicles had been purchased at a cheap price and were sold for much more. Again, Allenberry kept this cash.

And what did D. J. Airways get in return? Just a few entries in some books of account. In the final accounting it amounted to very little. All the way through the advantage went to Allenberry and D.C.P.M., and later to D. J. Aviation. In the case of the 2323 vehicles that we are now considering the advantage was shared between Allenberry and D.C.P.M.

Now it is wrong when one is in a fiduciary, or a quasi fiduciary, position *vis-a-vis* one's own partners to mix up one's own money with that of the partnership. The proper course is to keep the two sets of moneys in separate bank accounts; or at the very least, when the sums are not large, in separate safes or boxes. It is not enough to mix all the money up in one cash box or bank account and separate it only nominally by credit entries in books. This applies as much to partners who handle the funds of a partnership as it does to guardians who handle the moneys of their wards, to trustees, agents, bank managers, solicitors, lawyers and persons who have charge of other people's money. A partner is just as much in a fiduciary or quasi fiduciary position *vis-a-vis* his partners as any of these other persons in that partners have to be "just and faithful" to each other. See Section 9 of the Indian Partnership Act, 1932. Allenberry did not even keep a separate set of books for the joint venture. It merely made entries of the sales in its own books.

Now see how this transaction of the 2323 vehicles was treated. As we have seen, the 2323 vehicles belonged to the joint venture and were sold by Allenberry between 28-2-47 and 31-12-47. The money that the customers paid went into the coffers of Allenberry and not into a separate joint venture bank account. But companies have to produce balance sheets

and statements of account at some point of time. The way in which the accounts of these companies were made up and squared is revealed in a letter dated 3-5-51 (Ex. 268/20) written by the accountant of Allenberry, N. C. Roy, to the head office at Delhi. It is true that this letter does not strictly bear on the present transaction (it will be considered separately elsewhere) but it illustrates how things were done in these companies. The Calcutta accountant, N. C. Roy, says,

"We may however try to analyse the account as far as possible and though there is every possibility of difference we can, if you so desire, *manipulate* and get this tallied with the figures appearing in the joint account, but it will take some time...."

That was just what was done here. The accounts were manipulated. There can be no doubt about that. The proof is overwhelming.

D. N. Banerjee made a similar suggestion to "manipulate" the accounts relating to the supposed sale of Drum and Pipe Line fittings valued at Rs. 52 lacs to D.C.P.M. on the same date. See his letter Ex. 413-A, p. 135. He admitted in the witness box that by "manipulation" he meant that the accounts should be altered "so as to show a false appearance."

Shital Prasad Jain made a similar suggestion in another connection in his letter Ex. 106 and again in a letter Ex. 116. He said "arrange the entries accordingly"; but the context of his letter shows that he meant the same thing. So N. C. Roy's suggestion was not mere accident.

We have already shown that the entire stock of disposal vehicles (including the 2323 vehicles with which we are now concerned) was purchased from the Director General of Disposals *for the joint venture* and was paid for with D. J. Airways money, that is to say, paid for in the first instance by Allenberry but recovered from D. J. Airways; so we need not go into that again.

Allenberry was in charge of the sales and its normal practice was to sell disposal vehicles from time to time on behalf of the joint venture and credit the receipts into a *joint venture sales account*. This practice was followed in the case of these 2323 vehicles until the juggling with the accounts began.

We will first show that these 2323 vehicles were sold in the normal way on behalf of the joint venture to third parties and that the sales were credited into the usual joint venture vehicles sales account. It was only after 18-12-48 that the entries relating to the said transfer of the sales from the Joint Venture to D.C.P.M. were made in the books of the Joint Venture kept by Allenberry.

The vehicles were at Calcutta and the main accounting was naturally done there because the Calcutta Office was the one that handed over physical possession of the vehicles as and when they were purchased by third parties; and the Calcutta Office received the money from them.

The point to be noticed in the analysis that follows is that there is no trace of the transfer of these 2323 vehicles on 28-2-47 in the documents that we are about to analyse. That will prove that no such transfer ever took place.

We will begin with the position on 3-4-47. When Allenberry and D. J. Airways jointly purchased the disposal vehicles from the Director General of Disposals they entered into an agreement to pay for them by instalments. On 2-4-47 Allenberry wrote to the Director General Disposals (Ex. 418) and said that they were not able to pay the March instalment and asked for easier terms. In support of their request they furnished the Director General with two statements to show that their sales had not come up to expectation. The first is dated 3-4-47 (Ex. 418). It showed the different types of vehicles that had been sold and their sale proceeds; but it did not show the number of vehicles of each kind separately. That was rectified on 5-4-47 and a typewise classification showing separately the number of each kind sold was sent in. (Ex. 418/P. 27 to 33).

Now the 2323 vehicles that are supposed to have been sold to D.C.P.M. on 28-2-47 are set out typewise in Ex. 130. A number of the kinds of vehicles mentioned in Ex. 130 are not to be found in the statement of 5-4-47 (Ex. 418). That can only mean that the vehicles not mentioned in the statement had not been sold up to 5-4-47 because, according to the letter, the statement was Allenberry's "latest statement of sales". In any case, there can be no misunderstanding in the case of the vehicles that are specifically mentioned in the statement. It contains a factual list of the number of vehicles of the kinds set out there that were sold up to 5-4-47 and sets out the numbers typewise. It will be enough for the moment to scrutinise the types of vehicles that are common to the two lists. We give a comparative statement below.

Types of vehicles common to the two lists								Total sales upto 3-4-47 as disclosed in state- ment sent to D.G.D. Ex. 418	Sale supposed to have been made to D.C.P.M. on 28-2-47 as per Ex. 130
Ambulance .. .. .	..	..	..	..	..	..	..	27	30
Commander Car .. .. .	..	..	..	..	..	..	..	15	70
Diamond T Dump .. .. .	..	..	..	..	..	..	..	nil	130
Dodge Truck .. .. .	..	..	..	..	..	..	..	nil	120
G.M.C. Chassis .. .. .	..	..	..	..	..	..	..	22	25
G.M.C. Cargo Truck .. .. .	..	..	..	..	..	..	..	73	128
Jeep .. .. .	..	..	..	..	..	..	..	340	930
Personal Carrier .. .. .	..	..	..	..	..	..	..	20	80
TOTAL ..								497	1,513

It is evident from this that at least 1,016 vehicles of the kinds mentioned in the statement which are supposed to have been sold to D.C.P.M. on 28-2-47 had not been sold down to 5-4-47; and that is enough to show the falsity of Ex. 130. The statement of 5-4-47 was contemporaneous with the event and is not likely to be wrong.

But there is more evidence than that. When the Director General of Disposals received the application of 3-4-47 asking for easier terms it agreed to grant the request but imposed certain conditions. One was that certain specified vehicles held by the Joint Venture on 14-6-47 were to be mortgaged to Government. The mortgagers (Allenberry and D. J. Airways)

were given the right to sell them but *only as the agent of Government and not on their own account*. They were further directed to keep a *separate account* of the sales thus made to hold the sale proceeds *as trustees for the benefit of Government*. They were also directed to furnish monthly statements of (1) sales of the mortgaged vehicles, and (2) accounts for sales and expenses. These were to be maintained in a prescribed manner. (See Ex. 425/P. 24 to 29).

The monthly statements were furnished as required and they disclose the following (Ex. 423/P. 24, 28, 33, 37, 45 and 50).

Month	No. of vehicles sold	Sale value
		Rs.
July	213	12,05,215 0 0
August	438	13,98,794 4 0
September	248	13,85,052 8 0
October	158	6,24,603 4 0
November	285	16,16,945 14 0
December	494	16,29,493 7 3
TOTAL ..	1,836	78,60,104 5 3

This shows that 1,836 disposal vehicles were sold *on behalf of Government* for Rs. 78,60,104-5-3 in the half year ending 31-12-47.

Now the following documents will show, either that the 2323 vehicles that are supposed to have been sold to D.C.P.M. were not sold, or that, despite the same, many of them were fraudulently included in the 1,836 vehicles that Government was told still belonged to Allenberry at the dates of the sales and were sold by Allenberry under the mortgage *for and on behalf of Government*. The documents will show conclusively that if as many as 2323 were sold to D.C.P.M. on 28-2-47 then Allenberry did not have as many as 1,836 to sell for and on behalf of Government. The evidence does not reveal that any fraud was practised on Government under the mortgage, so the only rational conclusion (especially when taken in conjunction with other facts) is that the fraud was perpetrated at a later date and took the shape, among other things, of inventing an imaginary transfer on 28-2-47 and ante-dating the document Ex. 130.

We will start with the monthly stock statements that Allenberry, Calcutta, submitted month by month to its control office at Delhi (*vide* copies in the arbitrator's records filed in the Court of District and Sessions Judge, Delhi, Ex. 425/P. 36). These statements were submitted between 3-2-47 and 31-7-47. They give the total stock of vehicles with Allenberry at the end of each of the months set out below.

Last day of the month	Stock	Total sales during the month
31-1-47	34,825	—
28-2-47	33,960	865
31-3-47	32,653	1,307
30-4-47	31,589	1,064
31-5-47	31,410	179
30-6-47	30,909	501

The sales effected in any month are obtained by deducting the stock in hand at the end of any month from the stock in hand at the end of the previous month. It will be seen that in no case did the sales exceed 1,307 in any month. It will also be obvious that the 2323 vehicles that are said to have been sold on 28-2-47 could not have been sold because the total sales effected in the month-ending 28-2-47 only came to 865 and those effected in the next month to only 1,307. Even if the sales of the two months are added together they only come to 2,172 and not to 2323. So it is clear that the supposed sale of the 2323 vehicles on 28-2-47 was not reflected in the Calcutta accounts (where the sale is said to have been made) down to at least 30-6-47 when the last of the statements was sent to the arbitrators.

We next come to a letter (Ex. 392) dated 16-9-47 written by the Calcutta accountant of Allenberry, N. C. Roy, to Shital Prasad Jain at Delhi. It enclosed a statement of "Disposal vehicles sales from January to June 1947, typewise and monthwise" on (Ex. 393). This gives a detailed statement of the sales of each kind of vehicle effected during that period month by month and depot by depot. Eleven depots are set out ranging from Lahore to Dibrugarh, Delhi, Nagpur, Lucknow, Patna, Calcutta, Madras, Bombay etc. The statement was prepared long after 30-6-47 and gives the *total sales* effected at all the eleven depots during that half year as Rs. 1,93,17,021. *This statement does not include the Rs. 47,19,800 for the 2323 vehicles supposed to have been sold to D.C.P.M. on 27-2-47.*

It will be necessary to explain how that is established. The proof is to be found in their own documents in three ways. First there is the audited statement of the profit and loss account of the joint venture for the half year ending 30-6-47 (Ex. 59). The certificate is shown to have been signed on 10-12-47. This placed the total sale of the disposal vehicles at Rs. 1,89,14,204-1-6.

There is a discrepancy of Rs. 4,02,816-14-6 between this statement and the typewise/monthwise statement. We will deal with that later. At the moment we will concentrate on the Rs. 1,89,204-1-6.

Next we find that the Delhi Office asked the Calcutta accountant of Allenberry, N. C. Roy, to furnish certain information about the sales of the disposal vehicles for each of four half years, including the half year ending 30-6-47. On 15-9-48, Roy gave the figure standing in his books namely, Rs. 1,89,14,204-1-6. This figure, for the half year ending 30-6-47, is the same as the one in the Audited Joint Venture accounts namely, Rs. 1,89,14,204-1-6 (Ex. 59). Roy's letter is Ex. 404.

Then thirdly, we have a letter dated 2-9-49 written by N. C. Roy to Shital Prasad Jain, the head accountant in Delhi. This letter enclosed a statement of account which also showed that the disposal vehicles sales for the half year ending 30-6-47 was Rs. 1,89,14,204 (Ex. 267, P. 6).

We therefore have agreement about the figure from three different sources, from dates ranging from 10-12-47 through 15-9-48 down to 2-9-49; and one of them is after a certified audit. All agree that the total sale of disposal vehicles in that half year was Rs. 1,89,14,204-1-6.

Now it is admitted that this figure of Rs. 1,89,14,204-1-6 does not include the Rs. 47,19,800 because their own documents show that instead of crediting the sale to the joint venture sales account, as was done in the case of every other disposal vehicle sale, the sale was credited to the *stock* account of the Joint Venture in Allenberry's Books. As we said earlier, this and the Rs. 52 lakhs transferred from the Drums and Pipeline accounts, are the *only* cases in which that was done during the whole of the joint venture period that is, up to 30-6-48. It follows, that if there was a sale of Rs. 47,19,800 on 28-2-47 then it was in *addition* to the sales shown in the audited account (Ex. 59) and in N. C. Roy's two statements 1948 and 1949 referred to above. Therefore, if Ex. 130 is a genuine document, the *total* sales in the half year in question would be Rs. 2,36,35,004-1-6, that is

	Rs. 1,89,14,204	1	6
Plus	Rs. 47,19,800	0	0
	Rs. 2,36,34,004	1	6

But in the typewise/monthwise statement of sales made by each depot (Ex. 393) (furnished in September 1947) the total sales of *all combined* only come to Rs. 1,93,17,021. Even if it be accepted that there were some sales in this statement outside the sales of Rs. 1,89,14,204 shown in the other statements all it means is that sales of Rs. 4,02,817 were effected in that year over and beyond the Rs. 1,89,14,204. What is certain is that the additional sales, if any, were not as large as Rs. 47,19,800 and that therefore the sale of the 2323 vehicles is not reflected in any of N. C. Roy's statements nor it is reflected in the audited accounts of the Joint Venture.

But there is even more to be gathered from N. C. Roy's typewise/monthwise statement of 16-9-47 (Ex. 293). The statement sets out the number of vehicles sold *typewise*. We will now compare the vehicles that are mentioned in this statement with the vehicles of those types that are said to have been sold on 28-2-47. The comparison shows the following :

Types sold	Sales as per statement (Ex. 393)	Sales as per Ex. 130
Cargo Trailers (1 ton & 2½ tons)	107	250
Diamond T. Dump	33	130
Personnel Carrier	60	80
Semi Trailer	19	60
Tractory Whites	nil	35
	219	555

Here again there is a large discrepancy showing conclusively that the sale of the 2323 vehicles is not reflected in any of N. C. Roy's Statements of accounts down to 16-9-47.

We will now pass on to another set of documents, namely, the various Trial Balances and accounts of (a) Allenberry, (b) the joint venture and (c) D.C.P.M. In a proper accounting the final statement of accounts that appears in the audited balance sheets and profit and loss accounts are based on these documents.

We will start with the Provisional Trial Balance of Allenberry, Calcutta, as on 31-12-1947 (Ex. 416). This shows that the *total* "Disposal Vehicles

sales" made by Allenberry in that half year amounted to Rs. 1,22,68,492. We do not know when this Trial Balance was prepared but it was obviously after the close of the half year and not before, that is, it was prepared after 28-2-1947 and so should have reflected the sale said to have been made on that date. But we find that it does not. In addition to the sales shown above it shows an item of Rs. 22,16,275 as the total selling expenses on account of the aforesaid disposal vehicles sales made in that half year.

Next we come to the Provisional *Joint Venture* account for the half year ending 31-12-1947 (Ex. 269 p. 7). This shows that the total sales amounted to Rs. 1,26,06,393. Here again, we do not know the date of this document but it appears to have been cast after Allenberry's Provisional Trial Balance because there is a discrepancy of Rs. 3,37,901 between the two statements and the figure given in the Provisional Joint Venture account appears to have been accepted as correct and used as the basis for the figures given in the audited statement of accounts for the joint venture as on 31-12-1947 (Ex. 60) and also in Allenberry's Trial Balance as at 31-12-1947 (Ex. 415). But whether the Provisional Joint Venture statement was prepared before or after the Provisional Trial Balance it was obviously prepared after 31-12-1947 so, whichever figure is taken, it shows that the total sales came to at least Rs. 1,22,69,492.

The corresponding total selling expenses shown in this statement (Ex. 269 p. 7) come to Rs. 36,06,673.

Next comes the Trial Balance of *Allenberry, Calcutta*, as at 31-12-1947 (Ex. 415). Again, we do not know when it was prepared but it must have been after the Provisional Trial Balance and the Provisional Joint Venture account. This shows a sum of Rs. 1,35,80,620 to the credit of the joint venture.

The figure of Rs. 1,35,80,620 is reached as shown below. The Provisional Joint Venture account (Ex. 269 p. 7) shows the following :—

	Rs.
Disposal Vehicles sales	1,26,06,393
Stores sales	45,80,900
	<hr/> 1,71,87,293
Less the selling expenses	36,06,673
	<hr/> 1,35,80,620

The difference gives the figure Rs. 1,35,80,620. Therefore, it is clear that the Rs. 1,35,80,620 is based on the fact that the total sales effected by Allenberry *on behalf of the joint venture* in the half year came to Rs. 1,26,06,393.

Next we come to the Final Provisional account of the Joint Venture for the half year ending 31-12-1947. This also shows that the sales effected on behalf of the Joint Venture came to Rs. 1,26,06,393 (Ex. 269 p. 6). This statement was forwarded from Calcutta to Delhi with a covering letter, dated 17-11-1948 (Ex. 296/6). It is, therefore, clear that down to 17-11-1948 it was accepted that the joint venture accounts had a sum of Rs. 1,26,06,393 on account of disposal vehicles sold *on behalf of the Joint Venture* during the half year ending 31-12-1947.

These documents also show that the selling and depot expenses for those sales were charged to the joint venture, which means that the sales had been effected on behalf of the joint venture and not on behalf of some third party.

Now the position shown in the Trial Balances etc. that we have examined above was accepted as correct right down to 18-12-1948. First we have the fact that the Final Provisional Joint Account as at 31-12-1947 (Ex. 269 p. 6) was forwarded from Calcutta to Delhi on 17-11-1948 and that the Delhi Office made some comments on it in a letter, dated 3-12-1948 (Ex. 379 p. 3); but they did not challenge the figures for the selling and depot expenses on account of the disposal vehicles. Those expenses relate to the *entire* disposal vehicles sales made by Allenberry in that half year and they were charged to the joint venture.

Then on 18-12-1948 the Calcutta accountant, N. C. Roy, sent an analysis of the joint venture accounts for the *next* half year (ending 30-6-1948) to Delhi and he pointed out that the balance standing to the credit of the joint venture was the same as in the previous half year, namely, Rs. 1,35,80,620-14-0 (Ex. 278). As we have seen, this is the balance shown in the Provisional Joint Venture account (Ex. 269 p. 7) as at 31-12-1947 and is based on a figure of Rs. 1,26,06,393 for the total sales of disposal vehicles effected by Allenberry on behalf of the joint venture for the half year ending 31-12-1947.

Now *some* of the joint venture vehicles were mortgaged with government and the statement submitted to government (Ex. 423) shows that the sales of the mortgaged vehicles amounted to Rs. 78,60,104-5-3. It follows that, if the total sales in that half year came to Rs. 1,26,06,393, and if, out of them, Rs. 78,60,104-5-3 were mortgaged vehicles and were sold on behalf of government, then only Rs. 47,46,288-9-9 non-mortgaged vehicles could have been sold by Allenberry during the half year in question and not the Rs. 1,02,62,705-1-6 mentioned in Ex. 131.

The reason is this. If 2323 vehicles were sold to D.C.P.M. on 28-2-1947, as they are supposed to have been according to Ex. 130, and if, later, these vehicles were sold by Allenberry on behalf of D.C.P.M. for Rs. 1,02,62,750-1-6, as Ex. 131 says they were, then, assuming that government was not cheated, Allenberry's total sales in that half year *outside the mortgage* would have been at least Rs. 1,02,62,750-5-6 and not the mere Rs. 47,46,288-9-9 that the documents referred to above disclose. This is where the fraud comes in.

Section 131 of the Indian Companies Act, 1913 required that a balance sheet and a profit and loss account should be laid before the company at a general meeting within a specified time. The balance sheets of Allenberry, for the half year ending 31-12-1947 and of D. J. Airways and D.C.P.M. for the years ending 30-6-1948 and 29-2-1948 had not been submitted by September, 1948 and the time limits for the submission of the statements in respect of each of these companies was fast approaching. Income-tax returns also had to be filed and the Income Tax Officers would want particulars and details. By about June, 1948 R. Dalmia and those in charge at that date, were in a position to know how the finances of each of these companies stood at the end of 1947, that is, as on 31-12-1947.

They found that Allenberry and D. J. Airways had made large profits whereas D.C.P.M. had run into loss. If the true state of affairs had been disclosed then, (1) the shareholders of D. J. Airways would have benefited through the company, by about Rs. 7,48,673 because of the profits made by Allenberry and D. J. Airways in the Joint Venture, and (2) about Rs. 3,51,975 extra would have had to be paid to Government in the shape of income-tax. It was, therefore, decided to manipulate the accounts and transfer a sum of Rs. 1,02,62,705 from the joint venture accounts to D.C.P.M. and thus reduce the profits of the joint venture and minimise the loss of D.C.P.M. In this way R. Dalmia and concerns under his control benefited to the extent of Rs. 7,48,673 against the shareholders of D. J. Airways and to the extent of Rs. 3,51,975 against Government. The figure of Rs. 7,48,673 does not take into consideration the income-tax that would have been payable by Allenberry. The scheme that was devised was this.

First, it was decided to show a fictitious sale of 2323 joint venture vehicles to D.C.P.M. on 28-2-1947 and ante-date the accounts and forge documents accordingly. The sale was made "at cost" so that the joint venture (which in turn meant the shareholders of D. J. Airways) would get nothing out of it. As we have seen, the vehicles were bought at a cheap rate so a transfer to a third party at cost gave the third party (in this case D.C.P.M.) all the advantage of the original bargain. In any case, the fact remains that the 2323 vehicles that are supposed to have been sold to D.C.P.M. for Rs. 47,19,800 (the cost price according to Ex. 130) were re-sold within the next ten months, supposedly on behalf of D.C.P.M. for Rs. 1,02,62,705-1-6. The profit from these sales were accordingly given to D.C.P.M. and the joint venture got nothing, which in turn meant that the shareholders of D. J. Airways were deprived of their half share in these profits. The loss to the shareholders works out to about Rs. 7,48,673. The advantage went to D.C.P.M. and through it to R. Dalmia.

This decision naturally caused difficulties because it meant manipulating and altering a number of interrelated accounts and other entries; and now we will deal with the documents that reveal this process. The documents that we have analysed so far show that right down to 18-12-1948 Allenberry's Calcutta Office (the office that had physical possession of the disposal vehicles and which did the actual selling) treated the sales as having been made *on behalf of the joint venture* and credited the sale proceeds to the joint venture account and debited the joint venture with the corresponding selling and depot expenses. Even the audited accounts of the Joint Venture as on 30-6-1947 (Ex. 59), which were shown as certified on 10-12-1947, do not reflect the supposed sale of 28-2-1947.

We have not got all the correspondence but this much can be gathered from what we have got. It seems that some sort of decision to juggle with the accounts was reached round about June, 1947 because Shital Prasad Jain wrote to S. L. Verma (the Chief Accountant of the Bharat Bank, Delhi) on 26-9-1947 (Ex. 116) and reminded him that R. Dalmia had desired in the first week of June, 1947 that the profits in the Disposal Vehicles joint venture business should be taken as Rs. 25 lacs, but he pointed out certain difficulties and concluded :

"You may please see whether the net profit of Rs. 25 lacs from Disposal Vehicles business is to be maintained as such or some amount is to be taken to lease Rs. 15 lacs net profit in Dalmia

Jain Airways, and *whatever may be decided by Sgt. R. K. Dalmia*, an entry may provisionally be made for that by you under advice to *us and we shall arrange our account accordingly.*"

He also said,

"H. D. Bishnoi and I are both of the opinion that *even if Allenberry is not in a position to send their statement of profit and loss account in joint business for half years ended 31-12-1956 and 30-6-1947, your work should not suffer..... We shall work out the details to arrive at a certain result, the result being already decided.*"

This filtered down to N. C. Roy at Calcutta and it seems that as late as 5-7-1948 (Ex. 391 p. 100) they were still debating about how to juggle the joint venture accounts as on 30-6-1947 in *Allenberry's books*.

The letter (Ex. 116) also shows that though the pro forma Balance Sheet or the Trial Balance of the Joint Venture accounts for the half year with which we are concerned was urgently required in a court case they were in fix and could not supply it. The figure of Rs. 16,96,000 shown in the audited Joint Venture account (Ex. 59) seems to have been a compromise between the Rs. 25 lacs suggested by R. Dalmia in the first week of June and the modification suggested by Shital Prasad Jain in his letter, dated 26-9-1947 (Ex. 116). Anyway, the profit was fixed at Rs. 16,96,000 and the auditor has purported to certify this figure as on 10-12-1947 (Ex. 59). That made difficulties for N. C. Roy who was preparing *Allenberry's* accounts. He was told by Shital Prasad Jain on 7-6-1948 (Ex. 391 p. 169) that :

"You would also remember that we had advised half profits for this half year to Dalmia Jain Airways as Rs. 8,48,000 *and we have to maintain that.*"

N. C. Roy pointed out (Ex. 391 p. 100) that if the profits of the Joint Venture had to be maintained at Rs. 16,96,000 then *Allenberry's* accounts would require manipulation and he made some suggestions about the way in which that could be done. He sent in two alternative statements and asked Shital Prasad either to choose one of them or make his own suggestions. Both of N. C. Roy's proposals meant juggling with the figures in *Allenberry's* accounts.

Anyway, these letters show that the desire to juggle with the accounts in order to show a predetermined profit in the various Balance Sheets and Profit and Loss account was very much in their minds at that time, that is, in June and July 1948.

Now we come back to the 2323 vehicles. It is not possible to say exactly when the decision to effectuate the fraud we are considering was reached but there seems to have been some bungling at the start because full and proper directions do not appear to have been issued all down the line with the result that those who had not been told about the fraud went on preparing their accounts in the usual way ignoring the sale of 28-2-1947 about which they knew nothing.

The earliest hint that we have about this transfer is in a letter, dated 25-5-1948 from Shital Prasad Jain at Delhi to H. D. Bishnoi at Dalmianagar (Ex. 363 p. 394). It seems that Dalmianagar had been pressing

for a statement from Delhi and that Delhi was not able to give it, so Shital Prasad Jain wrote apologetically from Delhi and said,

"I am sure you must be remembering the circumstances of the entry as also hinted in my letter to Sjt. S. P. Jain."

and he added,

"You will appreciate that I cannot get any statement prepared or proceed in the matter here because all relative affairs are at Calcutta."

We do not know what the "entry" or what the "hints" referred to are but it seems from the next letter (Ex. 363 p. 393) that they relate to an entry of Rs. 99,19,800. In any case, if this does not refer to that entry then we do not hear of the transfer till even later.

The next letter that we have is dated 15-6-1948 (Ex. 363 p. 393). It is written by H. D. Bishnoi at Dalmianagar to Shanti Prasad Jain. It says that,

"An entry was made in D.C.P.M. books in Dalmianagar branch on 28-2-1947 for Rs. 99,19,800 being cost of pipelines and fittings purchased from Allenberry. *These goods are being sold by Allenberry but we have not received any account statement from them and therefore no entry could be made in the D.C.P.M. books.*"

"As D.C.P.M. books are to be closed shortly I would request you kindly to direct Allenberry, Calcutta to send the relative statements and *also let me know if we have to give any percentage of Commission to Allenberry for this sale.*"

Shanti Prasad Jain forwarded this letter to R. Dalmia on 19-6-1948 (Ex. 363 p. 392) and said,

"Please get necessary instructions forwarded to Hariduttji in the matter." (Hariduttji is H. D. Bishnoi).

The next that we hear about the matter is in a letter, dated 27-1-1949 written from the Dalmianagar Office to Shital Prasad Jain in Delhi (Ex. 363 p. 301). It seems that the D.C.P.M. Dalmianagar Office was again pressing for the final trial balance and that Delhi wanted a debit advice, dated 28-2-1947 for the Rs. 99,19,800. Dalmianagar says in this letter that the advice had been sent. The letter shows that the Rs. 99,19,800 was made up of :

Rs. 52,00,000 on account of pipelines & fittings, and Rs. 47,19,800 on account of vehicles stock.

Now the Rs. 52,00,000 was also an ante-dated fraud, but we will deal with that in another place. For the moment we will concentrate on the Rs. 47,19,800 that relates to the Disposal Vehicles stock that is supposed to have been sold to D.C.P.M. on 28-2-1947 for this sum (Ex. 130).

The following facts emerge from the correspondence that we have just referred to,

(1) That as late as December or January 1949 Delhi was pressing for a debit advice from D.C.P.M. regarding the purchase that D.C.P.M. is supposed to have made on 28-2-1947;

(2) That as late as 15-6-1948 D.C.P.M. had not received any statement of the sales of the 2323 vehicles that Allenberry is said to have made on its behalf and that therefore none of these sales were reflected in the D.C.P.M. books; and yet the transfer of the sale proceeds is said to have been effected in a lump sum on 31-12-1947 according to Ex. 131. The D.C.P.M. year ended on 29-2-1948 so a transfer of Rs. 1,02,62,705-1-6, if it had really been made on 31-12-1947, ought to have appeared in the books long before the letter of 15-6-1948 was written.

Even if D.C.P.M. had no record of the individual sales said to have been made on its behalf it would certainly have had a record of the Rs. 1,02,62,705-1-6 said to have been transferred to it on 31-12-1947 on account of these sales;

(3) They were still debating on 15-6-1948 whether Allenberry should be paid commission for the sale effected before 31-12-1947, which of course means that there were no entries in the books of Allenberry about this up to 18-12-1948.

Now we have already seen that right down to 18-12-1948 the Calcutta accounts of Allenberry and the audited accounts of the Joint Venture, as well as the Trial Balances and so forth of the joint venture, all ignore the supposed sale to D.C.P.M. on 28-2-1947. We will now examine how the sales that Allenberry did effect were treated.

There is no doubt that Allenberry went on selling disposal vehicles up to 31-12-1947; and there can be no doubt that the 2323 vehicles referred to in Ex. 131 were sold in the ordinary course along with a number of others. But the records show that the sale proceeds all went into the joint venture sales account and not into the account of D.C.P.M. The selling expenses and the depot expenses were also charged to the joint venture. D.C.P.M. paid nothing up to 31-12-1947.

There are a number of documents that establish this to the hilt but we need not enlarge on this *because Allenberry's* records show that the sale proceeds amounting to Rs. 1,02,62,705 and Rs. 14,47,065 on account of the Depot expenses and Rs. 12,90,279 on account of Selling expenses as of that date were transferred from the joint venture account to that of D.C.P.M. That in itself is enough to establish that the sale proceeds for these 2323 vehicles were credited to the joint venture sales account as and when the sales were made and not to the account of D.C.P.M. and that the proceeds were transferred to D.C.P.M. in a lump sum from the joint venture account at a later date. It also establishes that the joint venture was debited with the selling expenses and the depot expenses and not D.C.P.M. : and that can only mean that the sales, when made, were made on behalf of the joint venture. The following documents will also bear this out.

We have already referred to Allenberry's Trial Balance as at 31-12-1947 (Ex. 415) which shows that the joint account had Rs. 1,35,80,620 to its credit on 31-12-1947; and we have explained that that figure includes disposal vehicles sales of Rs. 1,26,06,323. We have also shown that N. C. Roy intimated to Shital Prasad Jain in his letter, dated 18-12-1948 (Ex. 378) that Rs. 1,35,80,620 was the amount standing to the credit of the

joint venture on 31-12-1947. A letter of N. C. Roy (Ex. 268/23), dated 1-5-1951 says,

“Our book shows Disposal Vehicles sales Rs. 1,26,06,393-3-6 *out of which* Rs. 1,02,62,705-1-6 have been transferred to M/s. D.C.P.M. leaving Rs. 23,43,688-2-0 only in the joint venture account.”

Therefore, it is clear that the sale proceeds of these 2323 vehicles amounting to Rs. 1,02,62,705-1-6 were originally credited to the joint venture account and then transferred to D.C.P.M. in a lump sum as on 31-12-1947. It is also clear that down to 18-12-1948 Allenberry's books and the joint venture books both these showed a sum of Rs. 1,26,06,323 standing to the credit of the joint venture on 31-12-1947 on account of the joint venture sales.

It is also clear from N. C. Roy's letter, dated 29-8-1950 (Ex. 254) that right down to that date there was no entry *whatever* either in Allenberry's books or the joint venture books about this transaction because N. C. Roy says in that letter :

“there is no entry *whatsoever* in our books for this transaction.”

But by 1-5-1951 the books had been altered to show a balance of only Rs. 23,43,688-2-0 to the credit of the joint venture instead of the original figure. This was because of the transfer of Rs. 1,02,62,705-1-6 that is supposed to have been made on 31-12-1947. The ante-dating of the entry is clear.

The ante-dating naturally created a number of difficulties and they were felt as late as May 1951. N. C. Roy pointed out one of them in his letter dated 1-5-1957 (Ex. 268/23). An income-tax case was pending at Dacca and the income-tax authorities wanted audited statements, but the auditors said that they could not certify the joint venture accounts without checking up the details, and N. C. Roy pointed out that the difficulty arose because of this transfer of Rs. 1,02,62,705-1-6 along with the corresponding selling and depot expenses “in the second half of 1947”. So Roy asked Sharma at Delhi,

“We therefore, seek your guidance as to how to prepare these statement Branchwise and Depotwise. As it is not feasible *now* to prepare the statements branchwise in support of our joint venture account, we suggest preparing the same for the *whole* expenses and sale and showing the transferred amount at the *bottom*.”

But even this device had its dangers as Roy foresaw, and he warned Delhi.

“In this case also we feel the question may be raised *why the amounts have been transferred and we should be prepared with our reply also*.”

Then Roy said,

“In view of the above difficulties, we are afraid, *we cannot produce our books, viz., Sub-Ledgers of Disposal Vehicles sale and Disposal Vehicles Selling expenses.....*”

He concluded,

"If you think it expedient you may talk with Mr. Khandelwal over the phone and necessary advice may be given to him."

Khandelwal was the auditor.

This letter contains a frank reason why Allenberry's books could not be produced and shown to the Income Tax authorities. It must be for the same reason that the account books have not been produced before us. No books of any value (except those that were seized and those that Shanti Prasad Jain and J. Dalmia wanted in proof of their case about partition) have been produced; nor have we been allowed to inspect them. Allenberry's books for the Joint Venture at least are in existence; but they are said to be in Pakistan. We asked for their production. That was refused. We then asked for permission to inspect them *in situ*. That was also not allowed. N. C. Roy's letter quoted above shows why.

We will now pass on to the ante-dated documents and will examine them. We will begin with the ones that were fraudulently prepared to reflect a sale to D.C.P.M. of 2323 vehicles on 28-2-1947.

The first is the sale bill Ex. 130. It has three unusual features. The first is that it does not bear a serial number whereas other sale bills do. The second is that the bill only shows the numbers of each kind of vehicle sold but not either the selling rate or the total price for which each type was sold. The absence of such details is unusual in a sale bill. In any case it is impossible to ascertain from this bill how the figure of Rs. 47,19,800 was reached. The third unusual feature is this. The bill bears the Delhi address of Allenberry and is signed by Shital Prasad Jain as Head Accountant but it is made out in the name of Allenberry, Dalmianagar against the Dalmianagar office of D.C.P.M.

From there we pass on to another unusual feature. If the sale had been made in the normal course the proceeds would have been entered in the disposal vehicles *sales* account. Every other sale was entered in that account both before and after 28-2-47. *This was the only exception.* In this case the Rs. 47,19,800 was credited to the joint venture *stock* account (Ex. 254).

Contrast this with the sales of these same vehicles when they were sold to third parties after 28-2-47, supposedly on D.C.P.M.'s account. Those sales were credited to the *joint venture sales* account in the same way as every other sale of disposal vehicles. They were not credited into either the stock account or the account of D.C.P.M.

Therefore, aside from the absence of a serial number in Ex. 130, we find that the supposed sale from the joint venture to D.C.P.M. on 28-2-47 was entered in the stock account instead of the sales account and this is the only time that that happened; and yet the sales made *after this*, when the vehicles no longer belonged to the joint venture if their story is true, were credited in the normal way into the joint venture sales account just as if they were still joint venture vehicles. Such entries would have been most abnormal if these really had been made on 28-2-47. It follows that there was no sale on that date.

The reason why the supposed sale 28-2-47 was credited to the stock account was this.

It is proved by a number of documents that the normal practice was to credit the sales to the joint venture sales account. See Exs. 250, 63, 265 and 65. These are the audited accounts of Allenberry for the half years ending 31-12-46, 30-6-47, 31-12-47 and the year ending 31-12-48.

The only departure was in this case; and even that was peculiar. N. C. Roy wrote on 29-8-50 to the Income Tax Investigation Commission at Calcutta and said (Ex. 254),

"As far as the undersigned knows Rs. 47,19,800 worth of disposal vehicles were sold to D.C.P.M. in 1947 at cost price and the party's account was debited and stock account was credited. As the stock account was not at that time in our books there is no entry whatsoever in our books for this transaction."

This letter also shows that the Calcutta office, where the vehicles were, knew nothing about these sales even in August 1950. It was, of course, possible for the registered office at Dalmianagar to effect a sale, but it could hardly have done that without informing the office that was in possession of the vehicles; and it certainly could not have left that office in ignorance for 21 months from 28-2-47 to 18-12-48, especially as a large sum like Rs. 47,19,800 was involved.

From here we pass on to the audited balance sheet of Allenberry as at 30-6-47 (Ex. 63). This was audited by Khandelwal & Co. and the certificate was signed on 19-5-49. This is the first document that reflects the supposed sale of 28-2-47. As we have seen, the sale proceeds were not credited to the joint venture disposal vehicles sales account, as was the normal practice, but a very unusual departure was made at this juncture and the Rs. 47,19,800 was credited to the joint venture stock account. Khandelwal and Co. did not see the original vouchers because they were careful to say,

"share of profits in Joint Venture of Disposal Vehicles etc. as certified Rs. 8,48,000."

We have dealt with this earlier. The figure certified was the half in the profits of Rs. 16,96,000 that had been predetermined by R. Dalmia in consultation with Shital Pd. Jain with the help of N. C. Roy. But harking back to the supposed sale on 28-2-47 where did the auditor get his figures from? As we have seen, right down to 1-5-51 there was no trace whatever of this sale in Allenberry's joint venture books, there was no trace of it in the audited account of the joint venture as purported to be certified on 10-12-47; and there is no trace of it in the following very important documents that could not have omitted such a large transaction. We have already analysed them but as the matter is important we will summarise their effect. There are so many of them and they come from so many different sources that all could not have made the same mistake and repeated it time after time for over four years.

5-4-47	..	..	..	..	Statement furnished to D.G. Disposals. (Ex. 418).
Jan. 47 to June 47	..	..	..	..	Monthly stock statements to control office (Arbitrator's Record) Ex. 425.
June 47 to Dec. 47	..	..	..	..	Monthly statements to government made under the mortgage (Ex. 423).
16-9-47	..	..	..	..	Roy's 12-monthly statement (Ex. 392).
10-12-47	..	..	..	..	Joint Venture audited account for half year ending 30-6-47 (Ex. 59).

25-5-48	..	..	..	..	..	Delhi unable to prepare the statements that Dalmianagar wanted (Ex. 363 p. 394).
15-9-48	..	..	..	..	..	Roy's statement of disposal vehicles (Ex. 404).
17-11-48	..	..	..	..	..	Roy sends Final Provisional Joint Account (Ex. 269/6).
18-12-48	..	..	..	..	..	Roy's statement of account (Ex. 378).
2-9-49	..	..	..	..	..	N. C. Roy's statement of account sent to Shital Prasad Jain. (Ex. 267/6).
29-8-50	..	..	..	..	..	Roy says "no entry whatsoever" (Ex. 254).
1-5-51	..	..	..	..	..	Roy says (Ex. 268/20).
						(1) branchwise statement cannot be prepared; and
						(2) books cannot be produced before Income Tax Authorities.
Allenberry:						Provisional Trial Balance and Allenberry's Trial Balance.
Joint Venture:						Provisional Joint Venture Account. Final Provisional Joint Venture Account sent on 17-11-48.
Joint Venture:						Audited statement of account for half year ended 30-6-47 certified on 10-12-47.
D. C. P.M. :						Cannot prepare its books on 15-6-48 because neither Delhi nor Calcutta could furnish the necessary details.

And what about the account books that would have settled the matter one way or the other in a few minutes?

Allenberry:	Refuses either to produce them before us or to allow inspection of them <i>in situ</i> ; and as the books are in Pakistan they are beyond our reach.
D. J. Airways:	The Inspectors appointed under the Companies Act called for them but they were withheld. Then the Company was dissolved and the books were handed over to D.J. Aviation and were destroyed.
D.C.P.M. :	D.C.P.M. was also taken into liquidation. Its books were handed over to Delhi Glass Works and were also destroyed.

In view of all this the fraud and the ante-dating are beyond doubt.

We now come to the second half of the fraud. Having created a fictitious sale to D.C.P.M. as on 28-2-47 Allenberry is supposed to have sold these vehicles to third parties on behalf of D.C.P.M. and to have transferred the sale proceeds, amounting to Rs. 1,02,62,705, in a lump sum from the joint venture account to D.C.P.M. on 31-12-47. At the same time Allenberry is supposed to have debited the selling expenses amounting to Rs. 25,98,493 and the depot expenses amounting to Rs. 14,47,065 to D.C.P.M. on the same date and to have given the joint venture a corresponding credit.

The proof of this fraud and of the ante-dating is much the same as before. It will not be necessary, therefore, to analyse most of the documents in detail.

First we have the fact that though D.C.P.M. is supposed to have been the owner of these vehicles after 28-2-47 and though Allenberry is supposed to have sold them on behalf of D.C.P.M. the sale proceeds were all credited to the Joint Venture account. That appears from a number of documents, including Allenberry's Provisional Trial Balance and Allenberry's Trial

Balance as at 31-12-47; also from the Provisional Joint Venture Account and the Final Provisional Account as at 31-12-47.

Now it is obvious that this transfer would be reflected in these documents if it had been made on 31-12-47; and the fact that it is not shown that the transfer was not made on or before that date. But an even more important point is that we have evidence to show that the money was lying to the credit of the joint venture right down to 18-12-48.

We also have another important fact, namely that the sales of Disposal Vehicles that Allenberry is said to have made on behalf of the government under the mortgage down to 31-12-47 includes many of the 2323 vehicles sales. Therefore, unless government was cheated, the money received for the sales could not have been transferred to D.C.P.M. on 31-12-47 because, at that date Allenberry told government that the money was being held for and on behalf of government as its trustee. We have already dealt with this and so will not consider it further. But it will be necessary to analyse the figures shown in the trial balances etc. referred to above.

The Provisional Trial Balance of Allenberry as at 31-12-47 shows that the total disposal vehicles sales in that half year was Rs. 1,22,68,492. The Provisional Joint Venture account shows the total sales of disposal vehicles during the same period were Rs. 1,26,06,393. These two figures do not agree; but as we pointed out earlier, the discrepancy is only Rs. 3,37,901 and nowhere near Rs. 1,02,62,705. Therefore it is clear that whatever the difference is due to it is not due to the Rs. 1,02,62,705. But Allenberry's Trial Balance agrees with the provisional joint venture account. We have analysed this earlier and have shown that the Rs. 1,35,80,620 shown there is based on a figure of Rs. 1,26,06,393 for the disposal vehicles sales. The final Provisional Joint account of the Joint Venture as at 31-12-47 shows the same picture.

Now all three of these documents were prepared after 31-12-47, therefore, it is clear that unless the figure of Rs. 1,02,62,705 is included in the Rs. 1,26,06,393 these documents prove that the supposed transfer of 31-12-47 is not reflected in any of them.

The fact that the Rs. 1,02,62,705 is included in the figure of Rs. 1,26,06,393 is conclusively established by the audited Joint Venture account Ex. 60. *This is a false document* in that it purports to reflect the transfer of the Rs. 1,02,62,705 as at 31-12-47. Ex. 60 puts the total sales during that period at Rs. 23,43,688. This is the exact difference between Rs. 1,26,06,393 and Rs. 1,02,62,705. Therefore, it is clear that the Rs. 1,26,06,393 included the Rs. 1,02,62,705 and that means that the transfer of the latter figure that is said to have been made on 31-12-47 is not reflected in those documents and so could not have been made on that date.

This pattern is repeated in the selling and depot expenses and need not be considered separately.

Now here also, as before, the position revealed in the documents referred to above (except Ex. 60) was repeatedly accepted in subsequent correspondence down to 18-12-1948.

First, there is the letter written by H. D. Bishnoi from Dalmianagar to Shanti Prasad Jain on 15-9-1948 (Ex. 363) a copy of which was forwarded

to R. Dalmia on 19-6-1948. This is the letter in which H. D. Bishnoi says that there is an entry of Rs. 99,19,800 in his books showing a transfer to D.C.P.M. on 28-2-1947. This figure is made up of Rs. 52,00,000 pipeline fittings and Rs. 47,19,800 on account 2323 vehicles. That entry had been made in D.C.P.M.'s books by 15-6-1948. *After that* Allenberry is supposed to have sold these 2323 vehicles on behalf of D.C.P.M.; but H. D. Bishnoi says that there is not a single entry in his books relating to these sales; and more than that, even if the individual sales were not entered as and when made (as they should have been), at least the Rs. 1,02,62,705 which is supposed to have been made on 31-12-1947 ought to have been reflected in the D.C.P.M. books long before 15-6-1948; but H. D. Bishnoi's letter shows that even that was not there.

Three months later, on 15-6-1948, N. C. Roy speaking from Allenberry's books at Calcutta (Ex. 404), said that the total disposal sales for the half year ending 31-12-1947 was Rs. 1,23,43,992. His figure is not quite the same as either of the figures given in Allenberry's Provisional Trial Balance or in the Provisional Joint Venture Account (which tallies with Allenberry's Trial Balance) but the difference is small and is nearly enough to reflect the transfer of Rs. 1,02,62,705.

Another important point is that N. C. Roy placed the cost of these sales in the joint venture account when giving Shital Prasad Jain in Delhi the investment figure in the Dalmianagar books. Therefore, it is again clear that even as late as 15-9-1948 the price that the 2323 vehicles fetched was still lying to the credit of the joint venture and had not been transferred even as late as 15-9-1948; also that the joint venture was still bearing the cost of these sales.

This position was again confirmed on 17-11-1948 when the Final Provisional Account of the joint venture was forwarded by Allenberry's Calcutta office in a letter of that date (Ex. 269/6). This Final Provisional Joint Venture account modifies the Provisional Joint Venture account in a number of respects and Shital Prasad Jain even comments on the Final Provisional Joint venture account in a letter dated 3-12-1948 (Ex. 379/5) but the figures given for the *total* vehicles sales and expenses were not challenged.

All this internal evidence shows that the transfer of Rs. 1,02,62,705 from the joint venture account to that of D.C.P.M. and of the corresponding selling and depot expenses of Rs. 25,98,493 and Rs. 14,47,065 were not reflected in any of the books of either (a) Allenberry, (b) D. J. Airways, (c) the Joint Venture or (4) D.C.P.M., right down to 3-12-1948.

And now we come to the forged and ante-dated documents. The earliest documents in which the transfers are reflected are,

- (1) The final accounts of D. J. Airways for the half year ending 30-6-1948 (Ex. 33) which was certified by the auditors on 8-3-1949.
- (2) The final accounts of Allenberry for the half year ending 31-12-1947 (Ex. 265) and the Final accounts of D.C.P.M. for the year ending 29-2-1948 which were audited together and certified on the same date 19-5-1949; and
- (3) The final joint venture account (Ex. 60) which purports to have been certified on 20-2-1949 but which, as we shall show in another place were also fraudulently ante-dated.

We have seen that the *total* vehicles sales of Rs. 1,26,06,393 and the total selling and depot expenses of Rs. 38,88,773 and Rs. 21,65,597 respectively were originally recorded in the accounts of the joint venture. Then came these manipulated documents which purport to show that Rs. 1,02,62,705 out of the total sales and Rs. 25,98,493 and Rs. 14,47,065 for the selling and depot expenses were transferred to D.C.P.M. on 31-12-1947.

This transfer required a credit advice and one purports to have been issued to D.C.P.M. on 31-12-1947 (*See* Ex. 403). It is dated 31-12-1947, but does not bear a serial number like all the regular credit advices. Now it is a curious fact that exactly the same sort of departure from normal practice was made in the case of this sale bill Ex. 130 that purports to evidence the sale of the 2323 vehicles to D.C.P.M. on 28-2-1947. That also does not bear a serial number.

Next, these transfers are shown at the bottom of the statement in which the entire sales and expenses were recorded. We have already referred to N. C. Roy's letter (Ex. 268/23), dated 1-5-1951 in which he said it was impossible to prepare statements branchwise in respect of these sales and so said,

"We suggest preparing the same for the whole expenses and sales showing the transferred amount at the bottom."

Their difficulty was this. Having shown a supposed sale of *specified* types of vehicles it was impossible to correlate the later sales with these vehicles and so it was impossible to prepare a branchwise statement.

Next is the fact that even as late as 1951 Allenberry was not able to give details of these transactions and prepare a branchwise statement; and, most damning of all, is the confession.

"In view of the above difficulties, we are afraid we cannot produce out books" (before the income-tax authorities).

Now we see the difficulties into which this fraud led them. We will set them out chronologically. They all relate to the present matter.

26-9-1947	..	..	..	..	..	Allenberry not able to send the statement of the profit and loss account of the joint venture even though it was urgently required in connection with the case of D.J. Airways fixed for October 1947 (Ex. 116).
25-5-1948	..	..	..	..	..	Delhi not able to supply Dalmianagar with a statement of account for which the latter was pressing (Ex. 363, p. 394).
15-6-1948	..	..	..	..	..	D.C.P.M. not able to say whether a commission to Allenberry should be shown in its books (Ex. 363, p. 393).
5-7-1948	..	..	..	..	..	N. C. Roy not sure how to manipulate the accounts and asked for suggestions (Ex. 391).
27-1-1949	..	..	..	..	..	Dalmianagar still pressing for a final Trial Balance (Ex. 363, p. 301).
29-8-1950	..	..	..	..	..	N. C. Roy says no entry <i>whatever</i> in his books about the transaction; and yet one appeared by 1-5-1951 (Ex. 254).

1-5-1951

- (1) Auditor unable to give a certificate for the income-tax authorities in the absence of details.
- (2) Not possible to prepare branchwise statements.
- (3) Not able to make entries in their proper places and so obliged to put all in lump sum *at the bottom of the statement*.
- (4) Not able to show the income tax authorities the account books (Ex. 268/23).

Other difficulties.

- (1) Not able to place serial numbers on either the bill of sale Ex. 130 or on the credit advice (See Ex. 403).

These difficulties relate to entries that are supposed to have been made on 28-2-1947 and 31-12-1947. It is obvious that the difficulties could have been cleared up in a matter of 4 years if the entries were genuine and were made on the dates on which they are supposed to have been made.

The fraud and the ante-dating are established to the hilt. Only two observations remain. One is that the first transfer of the 2323 vehicles is supposed to have been made on 28-2-1947. That is the closing date of D.C.P.M.'s year of accounting. The second comment is that the second set of transfers is said to have been made on 31-12-1947. This is the closing date of Allenberry's year and of the half year of the joint venture.

We will now see who were incharge of the affairs of these various companies on the two crucial dates, namely, 28-2-1947 and 31-12-1947, and also in January 1949. If the sale of the 2323 vehicles took place on 28-2-1947, as is alleged, then the transfer was greatly to the detriment of the shareholders of D. J. Airways because it was made at "cost". It is, therefore, relevant to see who were in control of D. J. Airways when a transaction so very much to its detriment was allowed to take place. The significance of this query will be best grasped from the side by side statements that we set out below :—

On 28-2-1947

<i>D. J. Airways.</i>	<i>Allenberry & Co.</i>	<i>D. C. P. M.</i>
Shanti Pd. Jain (Director up to 28-8-48).	Shanti Pd. Jain (Managing Director up to 4-12-48).	Shanti Prasad Jain (Dy. Managing Director up to 1-11-1947).
J. Dalmia (Director up to 15-11-48).	V. H. Dalmia (son of J. Dalmia, Director from 15-5-45 to 3-11-47 and Managing Director from 15-5-45 to 10-7-47).	(Managing Director up to 3-11-47).
J. M. Gupta (Director up to 14-6-49).	H. D. Bishnoi (Director up to 14-9-50 and Head Accountant at Dalmia-nagar).	V. H. Dalmia (Director up to 21-10-47).
R. K. Jain (Director up to 4-3-49).	R. P. Bajoria (Director up to 30-6-49).	H. D. Bishnoi (Director up to 12-12-49 and Head Accountant at Dalmia-nagar).
Dalmia Jain & Co. Managing Agents and also R. Dalmia who was looking after the affairs of D.J. Airways on behalf of the Managing Agent Co.	J. M. Gupta (Director up to 1-12-47).	V. D. Agarwal (Director up to 5-7-52).
		M. K. Roy (Director up to 12-1-53).

It will be seen that the only Directors of D. J. Airways at that date were the two members of the D. J. Group and J. M. Gupta who was also a

director of Allenberry, and R. K. Jain, an employee of the Bharat Bank. R. Dalmia was looking after the affairs of the company (D. J. Airways) for and on behalf of Dalmia Jain & Co., Managing Agents. The resolution dated 5-10-1948 passed by the Board of Directors of Dalmia Jain & Co., by circulation states :

"Considered the administration of the company's affairs as Managing Agents of different companies.

Resolved that R. Dalmia will continue to look after the affairs of the company and Managing Agents of D. J. Airways Ltd., and remuneration of Rs. 7,500 per month be paid with effect from 1-10-1948."

Therefore, even if the sale to D.C.P.M. was made at that date, the fact that the sale was effected "at cost" and not at the real market price, which was twice as much, can now be understood. It can also be easily realised that D. J. Airways Ltd., had no chance of a square deal. The common interest between Allenberry and D.C.P.M. is also clear.

On 31-12-1947

D. J. Airways

Allenberry & Co.

D. C. P. M.

Shanti Pd. Jain (Director up to 28-8-48).

Shanti Pd. Jain (Director from 3-5-45 to 4-12-48 and Managing Director from 10-7-47 to 4-12-48).

H. D. Bishnoi (Director up to 12-12-49).

J. Dalmia (Director up to 15-11-48).

R. P. Bajoria (Director up to 30-6-49).

V. D. Agarwal (Director up to 5-7-52).

J. M. Gupta (Director up to 14-6-49).

Raizada Brijmohanlal (Director up to 10-3-52).

M. K. Roy (Director up to 12-2-53).

R. K. Jain (Director up to 4-3-49).

H. D. Bishnoi (Director up to 14-9-50).

Dalmia Jain & Co., Managing Agents, and also R. Dalmia who was looking after the affairs of D. J. Airways on behalf of Managing Agents Co.

Here again the only "watchdogs" on behalf of D. J. Airways were the three members of the D. J. Group and their stooge, J. M. Gupta and employee R. K. Jain. So again it is easy to understand how these very profitable sales that had been credited in the joint venture books were quietly removed and handed over to D.C.P.M.

From 15-9-1948 till 18-12-1948 the Direction were

D. J. Airways

Allenberry & Co.

D. C. P. M.

J. Dalmia (Director up to 15-11-48).

Shanti Pd. Jain (Director & Managing Director up to 4-12-48).

V. D. Agarwal (Director up to 5-7-52).

R. K. Jain (Director up to 4-3-49).

H. D. Bishnoi (Director up to 14-9-50).

M. K. Roy (Director up to 12-2-53).

J. M. Gupta (Director up to 14-6-49).

R. P. Bajoria (Director up to 30-6-49).

H. D. Bishnoi (Director up to 12-12-49).

Raizada Jagmohanlal (Director from 15-11-48).

B. L. Raizada (Director up to 10-3-52).

K. B. L. Chordia (Director from 18-8-48).

Shital Pd. Jain (Director from 9-12-48 to 16-4-51).

19th May 1949 (date on which the balance sheet was signed).

D. J. Airways	Allenberry & Co.	D. C. P. M.
R. Dalmia (Director from 5-3-49 to 12-11-51). He was also looking after the affairs of D. J. Airways on behalf of Dalmia Jain & Co., Managing Agents.	Shital Pd. Jain (Director up to 16-4-51). B. L. Raizada (Director up to 10-3-52).	V. D. Agarwal (Director up to 5-7-1952). M. K. Roy (Director up to 12-2-53).
Raizada Jagmohanlal (Director from 15-11-48 to 19-5-51).	K. B. L. Chordia (Director up to 31-12-55). R. P. Bajoria (Director up to 30-6-49).	H. D. Bishnoi (Director up to 12-12-49). S. R. Srivastava (Director up to 15-3-52).
J. M. Gupta (Director from 9-7-46 to 14-6-49).	H. D. Bishnoi (Director up to 14-9-50).	Raizada Jagmohanlal (Director up to 24-5-50).

The Balance sheets of Allenberry at the end of the relevant half years, namely 30-6-47 and 31-12-1947, were signed by four persons, Shital Prasad Jain, B. L. Raizada, K. B. L. Chordia and R. P. Bajoria, who were directors on 19-5-1949, being the date when the balance sheets were signed. Similarly, the balance sheet of D.C.P.M. at the end of the year ended 29-2-1948 was signed on 19-5-1949 by V. D. Agarwal, H. D. Bishnoi, M. K. Roy, Raizada Jagmohanlal and S. R. Srivastava.

So far as Dalmia Jain Airways is concerned, R. Dalmia was a director from 5-3-1949 to 12-11-1951, and the other two, namely, Raizada Jagmohanlal and J. M. Gupta were subservient to him. R. Dalmia was also looking after the affairs of Dalmia Jain Airways on behalf of Dalmia Jain and Company, the Managing Agents (*vide* resolution dated 5-10-1948 referred to earlier). J. Dalmia and Shanti Prasad Jain had gone out by then. J. Dalmia left on 15-11-1948 and Shanti Prasad Jain on 28-8-1948. According to Shanti Prasad Jain he resigned on 22-7-1948, but he was a director on 15-6-1948 when he was consulted by H. D. Bishnoi about Rs. 99,19,800 (which included Rs. 47,19,800) (Ex. 363) and again when he passed H. D. Bishnoi's letter on to R. Dalmia on 19-6-1948 and asked R. Dalmia to issue necessary instructions to H. D. Bishnoi (Ex. 363). It is clear, therefore, that he was a Director in D. J. Airways and Managing Director of Allenberry when *this fraud was being conceived*. In any event it can now be seen how easy it was to defraud the shareholders of D. J. Airways when there was nobody to protect their interests.

We will first examine the position taken up by V. H. Dalmia (W. No. 5) and N. C. Roy (W. No. 9) at Calcutta before we issued our statements of matters. We were then at the investigation stage and were trying to find out whether there was any justification for drawing up charges that might call for an answer.

V. H. Dalmia was the managing director of Allenberry at the relevant time and N. C. Roy was the Calcutta accountant of Allenberry in the automobile section.

They both admitted that the physical possession of the vehicles were with Allenberry before and after the transfer to D.C.P.M. At that date these 2323 vehicles were mixed up with the bulk of the vehicles purchased from the Director General of Disposals and were not demarcated in any

way up to the date of the transfer evidenced by Ex. 130. This fact was also admitted by S. N. Verma, the General Manager of Allenberry at Calcutta. It is also to be gathered from Exs. 59 and 60.

V. H. Dalmia told us that when the transfer evidenced by Ex. 130 was made, the General Manager, S. N. Verma was instructed to sort out the vehicles into 2 lots so that one lot could be set apart for D.C.P.M. and one for D. J. Airways. He said that instructions were given by Allenberry and that D. J. Airways was consulted. He said that the actual sorting out was done at the depots and that records were kept of the vehicles thus sorted out. He said that these records would show the number and type of vehicles allotted to each company and the places where they were located; but he could not say whether the engine numbers and chassis numbers were entered in these records. He was also not able to tell up who made the decision to sell these vehicles to D.C.P.M. and transfer the stock.

N. C. Roy was equally definite. He said that there was physical segregation and that 2323 vehicles were set apart physically for D. J. Airways and another 2323 for D.C.P.M.

Both were agreed that after the transfer, Allenberry continued to retain physical possession of these vehicles and that it made sales to third parties on behalf of D.C.P.M. out of the stock set apart for them.

When we issued our statements of matters after recording this evidence, we indicated that this was a myth and set out our reasons for saying so. After that there was a complete somersault. S. N. Verma, the then General Manager of Allenberry was called as a witness by Shanti Prasad Jain and Mr. Shah examined him about this transfer. Verma said that R. Dalmia instructed him to make the transfer and that all he knew about the matter was that they were to be sold to D.C.P.M. at cost. He said that there was no talk about a similar transfer to D. J. Airways at that time but that later, when he sent a list to R. Dalmia, R. Dalmia asked him to make a similar complement and set it apart for D. J. Airways. But he said that the separate stock that was marked off for D. J. Airways was not sold by Allenberry on behalf of D. J. Airways and that D. J. Airways received no credit though he had been instructed by R. Dalmia to make a similar complement and set it apart for D. J. Airways.

He was then questioned about the sale to D.C.P.M. as evidenced by Ex. 130 and he said that this was not a "real sale", consequently the head office did not treat it as a sale but as "some kind of token transaction". He said that by "token transaction" he meant just "book adjustments" between the two companies. He added that when the vehicles were actually sold "we forgot all about the information that I conveyed to R. Dalmia" so they had no D.C.P.M. Account in the head office. He was also clear that there was no "demarcation" and that no vehicles were kept apart for D.C.P.M.

So far as the bill Ex. 130 dated 28-2-1947 is concerned, Verma said that the first he knew about the bill was in April or May 1949. He said that the transfer was made without his knowledge and that even though he was the General Manager he did not know that these vehicles had been sold. He said that the sale was not entered in the books of the head office and that it is not reflected in any of the head office accounts.

D. N. Banerjee (W. No. 53) who works in the accounts department, also said that there was no demarcation, that no details of the vehicles were given and that only the total value was indicated without any break-up.

All this evidence is contradictory and, putting aside the fog of unreality that these witnesses have tried to wave round the transaction, we think the truth slipped out when Verma said that this was not a real sale but only "book adjustments" made to reflect some kind of "token transaction". That is also our conclusion. This was not a real transaction. It was entirely fictitious and was made to look like a real sale in order to cover up a fraud perpetrated for the purposes that we have explained above. None of the explanation given by any of these witnesses displaces the strong evidence we have set out to show fraud and deliberate manipulation of accounts and forgery and ante-dating of documents.

As we have said above, V. H. Dalmia said in the course of his cross-examination that when the 2323 vehicles were sold to D.C.P.M. in February 1947, an equal lot was demarcated and earmarked for the share of D. J. Airways. Had this been true, then D. J. Airways accounts for the year ended 30th June, 1947, would have shown either.

- (a) the vehicles as part of the stock-in-hand in the Balance Sheet as at 30th June, 1947 if unsold at that date; or
- (b) if sold, a credit to the Profit and Loss Account for the sales; or
- (c) a mixture of both according to the extent of the stocks unsold and stock sold.

As none of these items appears at any place in the D. J. Airways Accounts for the year ended 30th June, 1947, the inevitable conclusion is that the story put out by V. H. Dalmia is totally false.

There are some further facts to be taken into consideration. The only ones who can know anything about this transaction are Allenberry, D.C.P.M., D. J. Airways and those who were incharge at the time. The transfers that we got from them are summarised below.

Allenberry has offered no explanation in respect of the transaction in its written statement dated 14-6-1961. It merely raised a number of legal objection regarding the constitution of the Commission and certain other matters.

Dalmia Cement & Paper Marketing Co. Ltd. was amalgamated with Delhi Glass Works Ltd. under a scheme approved by the Court and was dissolved on 30-4-1953 by the order of the Court. Delhi Glass Works Private Ltd. is now in voluntary liquidation and its liquidator, R. D. Agarwala, in his reply dated 6-7-1960 said—

"that I, as a liquidator of Delhi Glass Works Ltd., never came into possession of any books or records of the said D.C.P.M. Ltd. as already informed in my letter No. DGW/10 dated 8-9-1958. As such I have neither any record nor information or knowledge regarding its affairs."

Statements of Matters were issued to the Directors of Allenberry, D.C.P.M. and D. J. Airways Ltd. The transfer has not been explained by

any of the Directors of these companies. R. Dalmia has not filed any reply to the Statements of Matters. No reply has also been filed by V. D. Agarwala and M. K. Roy, the directors of D.C.P.M., R. Bajoria and Shital Prasad Jain, directors of Allenberry.

Shanti Prasad Jain was a Director in the three companies, namely, D. J. Airways, Allenberry and D.C.P.M. on 28-2-1947. In the written statements he has denied all knowledge of any responsibility for the transaction. His stand is that he cannot be held responsible for the transfer of the 2323 vehicles and the alleged ante-dating of the entries as there was a dissolution of the D. J. Group with effect from 31-5-1948 and the three companies, namely, D. J. Airways, Allenberry and D.C.P.M. were allotted to R. Dalmia as the transfers were made after 15-9-1948 according to the Commission he said he was not responsible.

J. Dalmia was a Director of D. J. Airways and D.C.P.M. on 28-2-1947. His reply is on the same lines as that of Shanti Prasad Jain.

V. H. Dalmia who was a Managing Director in Allenberry and Director in D.C.P.M. on 28-2-1947, gave the following statement in his written statement dated 3-2-1961—

“Referring to the various paragraphs of Section ‘A’ under the above heading, Shri V. H. Dalmia invites the attention of the Commission to his evidence, wherein he had explained the position as best as he could. Moreover, the allegation made in the Statement of Matters is that the entries regarding the transfer of 2323 vehicles to M/s. D.C.P.M. Ltd. were ante-dated after Shri V. H. Dalmia had ceased to be a Director of Allenberry & Co. Ltd. (In November 1947), whereafter he had nothing to do with that company. He, therefore, does not feel called upon to answer the same in the circumstances, the allegations are not admitted.”

J. M. Gupta, a common Director in D. J. Airways and Allenberry has given the following explanation in his written statement dated 14-6-1960—

“I have no knowledge of the transfer of 2323 disposal vehicles to D.C.P.M. Ltd. on or about 28-2-1947. I was not concerned with the actual sale of vehicles and had no means of knowing the parties to whom vehicles were sold or transferred. The transfer of vehicles to D.C.P.M. Ltd. never came to my notice, on any occasion whatsoever. Sales were effected by the Sales Department and the billing was done by the Accounts Branch. I had no concern with either of the two branches and had, therefore, no knowledge of the factum or of the circumstances under which vehicles were transferred to D.C.P.M. Ltd.”

R. K. Jain who was a Director in D. J. Airways on 25-2-1947 has denied knowledge of the transfer. He says—

“I had no hand and was not a party in any manner in the disposal of the vehicles of the Joint Venture and was not concerned with the transfer of 2323 disposal vehicles to D.C.P.M. This matter never came to my notice and I had no knowledge of this transfer.”

H. D. Bishnoi was a Director of Allenberry and D.C.P.M. on the date of the alleged transfer. In his written reply dated 25-8-1960 (Allenberry, Joint Venture) he states—

“The answering Respondent is being made liable for the alleged ante-dating books of Joint Venture in respect of entries pertaining to the transfer of 2323 vehicles. The answering Respondent submits that he was not concerned with or responsible for the various entries made in the Joint Venture account kept by Allenberry & Co. Ltd. as the Accounts Section was being controlled by the Officer incharge of Accounts. The answering Respondent is being held responsible for the items mentioned in the Section because he had signed the relevant balance sheet of the D.C.P.M. Ltd. for the period ending 28-2-1948. The Answering Respondent respectfully submits that the signing of the balance sheet of D.C.P.M. Ltd. for 29-2-1948 was not the cause of origin of alleged ante-dating if there is any in the books of the Joint Venture. The alleged ante-dating in the books of Joint Venture according to the conclusion of the Commission took place sometimes after 15-9-1948 and the balance sheet of D.C.P.M. Co. Ltd. for the period 22-2-1948 was signed subsequently.”

If the transfer had really been made on 28-2-1947, as a Director of D. J. Airways he should have known about it.

Now these persons were all directors on 28-2-1947, the date of the alleged transfer. They all disclaim knowledge of the transaction. If it really took place on that date they, or at any rate some of them would have known about it; and if there was nothing wrong with it those who knew about it would have told us about it. Their disclaimer of knowledge about the transaction during the period of their directorship strengthens our conclusion that there was an ante-dating.

Mr. Shah tried to explain away some of the very damaging facts that this evidence reveals. He said that Mr. Verma had explained that R. Dalmia had intended to sell the vehicles and then did so without informing anyone in Calcutta. Mr. Shah said that he “inferred” that entries must have been made in the *Dalmianagar* stock account and that is why neither Calcutta nor Shanti Prasad Jain knew anything about it. These entries were not adjusted till the accounts for 30-6-1947 were made up and it was only then that the matter came to light.

This is much too naive an explanation. At best it is guess work. If there had been any truth in it Shanti Prasad Jain in his anxiety to “assist the Commission” would have had the *Dalmianagar* books inspected and would have said this in his written statement. In any case, Allenberry, which is in the best position to know the truth has not said a word. The *Dalmianagar* books have not been produced. We are sure that Shanti Prasad Jain could have got them with as much ease as he got the other books of Allenberry that he wanted in proof of his case of partition. D. N. Banerjee told us that Allenberry raised no objection to his inspecting their books on behalf of Shanti Prasad Jain; and we find that he made a very thorough inspection and made very elaborate notes. He told us that there was no conflict of interest between Allenberry and Shanti Prasad Jain. Therefore, even if

Allenberry were reluctant to bring their books, Shanti Prasad Jain could easily have adduced secondary evidence about their contents. We would have preferred "assistance" of a more concrete and material kind in place of this airy guess work.

Apart from that, this explanation makes nonsense of S. N. Verma's assertion and Shanti Prasad Jain's statement in the witness box, that the *directors* of these companies always made the decisions. V. H. Dalmia, who was the managing director on 28-2-1947 told us that he did not know who made the decision to sell these vehicles. All we have, therefore, is Verma's bland assertion that R. Dalmia made the decision and made the sale without anyone else who mattered knowing anything about it.

We do not think this flimsy guess work displaces the weighty evidence of fraud that we have set out.

PERSONS RESPONSIBLE

We have next to determine who were responsible for this fraud. It is seldom easy to get direct evidence of fraud; and that is the position here. But the circumstantial evidence points directly to R. Dalmia.

There is ample proof that he was in control of D. J. Airways and Allenberry at the dates that we have set out above. The evidence of S. N. Verma, and Shanti Prasad Jain's letter (Ex. 259-R) also show that R. Dalmia was actively associated with the transfer. It is also obvious that only those who were in real control could have directed a transfer of this nature and have ordered a manipulation of the accounts. In addition, R. Dalmia is the one who stood to gain by this fraud because of his connection with Allenberry and D.C.P.M. We have no doubt therefore that R. Dalmia was responsible for this fraud at all its stages.

As regards Shanti Prasad Jain. The letter (Ex. 363 pages 394 and 393) show that he knew that a transfer of these vehicles was under contemplation on 25-5-1948 and 15-6-1948. But the other evidence that we have analysed above shows that it was not reflected in the books on 15-9-1948 and 18-12-1948 and that it must have been entered before 19-5-1949 when the balance sheets were signed. The decision to effect the transfer was, therefore, given effect to between these dates.

Shanti Prasad Jain resigned as a director of D. J. Airways on 28-8-1948 and of Allenberry on 4-12-1948. In our opinion R. Dalmia was toying with the idea of making this kind of transfer from before 25-5-1948 and that Shanti Prasad Jain knew this. But the idea was not translated into action till much later, and, as Shanti Prasad Jain was not a director then, and, as there, is no evidence to show that he was in any way associated with the implementation of the idea, he cannot be held responsible either for the transfer or the ante-dating and the manipulations.

The same applies to J. Dalmia. He ceased to be a director of D. J. Airways on 15-11-1948 and was never a director of Allenberry. There is nothing to connect him with any of this fraud at any of its stages. So he is also absolved from responsibility.

Of the others. We think that S. N. Verma knew what was going on, though there is nothing to show that he was associated either with the L10cLa-12,

transfer or the ante-dating. So far as the transfer is concerned, he was not a director and would have had to carry out the directions of those in control without necessarily knowing that the deal was fraudulent. As regards the ante-dating he says that he was not directly in charge of the accounts. It is possible that as General Manager he would not have known. Therefore, though his want of frankness in the witness box gives rise to a suspicion that he knew about what was going on it would not be proper to implicate him on mere suspicion.

We think that Shital Prasad Jain, N. C. Roy and D. N. Banerjee were parties to the ante-dating and to the manipulation of the accounts because their letters show that they had suggested manipulation and we find that the accounts were manipulated. It is, however, equally evident that they were acting under pressure and were carrying out orders from above.

GAINS AND LOSSES

Turning now to the gains and losses. This, like the assessment of damages in a civil action, can only be built on estimates. Opinions will naturally differ about the method of assessment and the manner of computation. In an inquiry of this kind, where we are not determining legal rights which would narrow the scope of our findings we think it proper to take a broad view. It would be impossible to determine in any narrow and legalistic way what the loss to the investing public was in these cases, or even to determine what was the gain to the D. J. Group or to any individual member of it. But it is possible to draw a broad picture and to show how individuals can enrich themselves at the cost of the investor and to his detriment and to reach a broad estimate of the result.

The vehicles here were transferred "at cost", but very soon after there was a large gain in the hands of others when they were re-sold. If this transfer had not been made the gain would have gone to the partnership and a share in it would have gone to the shareholders of D. J. Airways. We are, therefore, justified in saying that the gain made by the others was a loss to the partnership and thus to the shareholders of D. J. Airways; and that the measure of the gain is a fair index of the loss. Proceeding on that basis we get the following :—

The 2323 vehicles were sold to D.C.P.M. for Rs. 47,19,800 and were then resold for Rs. 1,02,62,705. That discloses a nett gain to D.C.P.M. was Rs. 14,97,347. In our opinion it is fair to say in a broad way that half of that is a fair measure of the loss to the shareholders of D. J. Airways.

D.C.P.M. also gained in another way and so did Allenberry. When these goods were sold, the sale proceeds were not paid into the account of D.C.P.M. but into the account of Allenberry. This placed a sum of Rs. 62,17,147 at the disposal of Allenberry. The money was not credited to the account of D.C.P.M. till 31-12-1947, the closing date of Allenberry's accounting year. Allenberry, therefore, paid D.C.P.M. a sum of Rs. 46,268 by way of interest. It is true that D. J. Airways was not entitled to interest on the sales of joint venture vehicles made by Allenberry, but it is equally true that by these manoeuvres one of partners derived a financial advantage for itself that ought to have been passed on to the partnership. On a broad view, if anybody was entitled to that interest it was the partnership. We are not interpreting the law. We are demonstrating how the investing

public was placed at a disadvantage by the use of legal devices that served to enrich individuals like R. Dalmia who were able to hide behind the corporate entities of his private companies.

Not only were the investing public put to a loss by these manoeuvres but government also lost a considerable amount in the shape of income-tax. We compute the loss at Rs. 3,51,975 as below :—

- (1) Rs. 3,01,224 being the tax leviable on D. J. Airways' half share of the profits, namely, Rs. 7,48,673 transferred to D.C.P.M. which had incurred a loss of a much bigger amount for the relevant year;
- (2) Rs. 50,751 being the *difference* in the tax (Rs. 1,52,043) which Allenberry would have paid, if there had been no transfers and the tax payable by D.C.P.M. (Rs. 1,01,292) on the nett profits of Rs. 2,51,755 after setting off its loss against the total transferred profits.

We tried on our statements of matters to work out the gain to the members of the D. J. Group, or at any rate to R. Dalmia, but after hearing the arguments of counsel for Shanti Prasad Jain we do not think it is possible to do so. For one thing, we have no evidence to show that the D. J. Group was in existence as a group at the date of these transactions, and we have no means of knowing who shared in the profits of Allenberry and D.C.P.M. when they were distributed. We are accordingly not able to allocate the gain that any individual made.



CHAPTER IV

MANIPULATIONS

We will now examine certain manipulations in the accounts designed to show the profits as at low a figure as possible.

As we have stated before D. J. Airways and Allenberry entered into a joint venture for the purposes of the disposal vehicles and spare parts business and this joint venture lasted from August 1946 up to 30th June 1948 when it was terminated. This section deals with the manipulations in the joint venture accounts, particularly, the cost of sales charged against the sales price realised for vehicles and stores during the joint venture period. By "cost of sales", we mean the actual costs incurred in acquiring the articles; and that is the basis on which the joint venture accounts have been prepared—all expenses pertaining to the sale, repairs, reconditioning, moving the articles into a saleable condition have been charged separately in the joint venture accounts. Therefore we shall proceed on the basis indicated.

The total sales during the joint venture period of vehicles and stores, as shown in the joint venture accounts, amounted to Rs. 4,63,83,285 made up of :—

Half-year ended

							Rs.		
31st December, 1946	..	..	..	..	..	..	56,78,368	Ex.	58
30th June, 1947	..	..	..	..	..	..	2,00,87,831	Ex.	59
31st December, 1947	..	..	..	..	..	..	50,97,289	Ex.	60
30th June, 1948	..	..	..	..	..	..	1,55,19,797	Ex.	61
							<u>4,63,83,285</u>		

This does not include the sales proceeds of 2323 vehicles transferred to D.C.P.M. The cost of sales of the vehicles and stores and spare parts shown in the respective joint venture periods amount to Rs. 2,77,53,958 made up as under :—

Half year ended

							Rs.		
31st December, 1946	..	..	..	..	..	..	30,21,281	Ex.	58
30th June, 1947	..	..	..	..	..	..	1,26,09,263	Ex.	59
31st December, 1947	..	..	..	..	..	..	28,47,385	Ex.	60
30th June, 1948	..	..	..	..	..	..	92,76,024	Ex.	61
							<u>2,77,53,958</u>		

The total purchase price of vehicles and spare parts was Rs. 5,71,32,500 made up as under :—

							Rs.		
Ex. 87	..	..	..	..	..	..	1,80,00,000		
Ex. 89/90	..	..	..	..	..	..	91,32,500		
Ex. 92	..	..	..	..	..	..	2,50,00,000		
Ex. 94 (Spare parts)	..	..	..	..	..	..	50,00,000		
							<u>5,71,32,500</u>		

Therefore, at the end of the joint venture period as on 30th June, 1948, the stock of vehicles and spare parts left over amounted to Rs. 2,46,58,742 as under :—

Total purchase price	5,71,32,500
Less: Cost of sales charged in the four half-year joint venture period 30th June, 1948	2,77,53,958
Cost of vehicles purportedly transferred to D.C.P.M. ..	47,19,800
	<hr/>
	3,24,73,758
	<hr/>
	Rs. 2,46,58,742

This closing stock was, however, adjusted on 1st July, 1948 in the books of Allenberry to Rs. 2,76,90,197 in other words reflecting a difference of Rs. 30,31,455 due to a wrong entry alleged to have been made at the Lucknow Branch.

One method of depriving D. J. Airways of its correct share of profits would be by inflating the "cost of sales" and expenses chargeable against the sales in the joint venture period. It is abundantly clear, as will be shown later, that no basis was adopted for evaluating the cost of sales and the method explained by Shanti Prasad Jain in his Written Statement is completely opposite to the deposition of S. N. Verma (W. 50).

Shanti Prasad Jain has stated that "cost of sales" may be described as the total cost attributable to the sales made. There is no controversy on that point, but he goes on to say that the "cost of sales" is the total amount expended on the products sold together with the entire expenses incidental to "*administration and distribution of the same*."

In certain cases, he has stated, the expenses incidental to administration and distribution may be shown separately, in which event the cost of sales would be the amount which has cost the concern to acquire. The latter, however, is the method sought to be adopted.

Basing his case on a quotation from "Accountancy" by William Pickles on page 88, Shanti Prasad Jain justifies the cost of sales being taken on an estimated basis, according to which, from the adjusted selling prices deduction is made for estimated selling expenses and the "*normal profit percentage*". As this was a deal which had no "*normal*" basis, we fail to see how the so-called "*normal profit percentage*" could have been arrived at.

Shanti Prasad Jain has stated that we have misconstrued the letter, dated 26th September, 1947 addressed by Shital Prasad Jain to S. L. Verma (Ex. 116). This letter clearly indicates that the profits of the joint venture were "fixed" and there is no misunderstanding with regard to the meaning of this letter in our minds, since the language is plain enough to indicate what it means.

We will now examine some of the correspondence with regard to this matter :

(i) For the half-year ended 30th June, 1947, N. C. Roy wrote to Shital Prasad Jain on 1st June, 1948 (Ex. 391/178) forwarding two alternative accounts of the joint venture and sought Shital Prasad's advice for finalising the accounts. N. C. Roy also sent to Shital Prasad Jain Trial Balances of both Allenberry and the joint venture accounts together with

supporting schedules for the two alternative accounts proposed by him. In his reply, dated 7th June, 1948 (Ex. 391/169) Shital Prasad Jain mentioned that the half-share of the pre-determined profits of Rs. 16,96,000, viz., Rs. 8,48,000, had already been advised to D. J. Airways and, therefore, advised N. C. Roy to maintain the said pre-determined profits.

(ii) On 25th May, 1948, Shital Prasad Jain wrote to N. C. Roy (Ex. 391-P. 186) and asked for the joint venture accounts to be sent for the half-year ended 30th June, 1947, and told N. C. Roy that if the entry for cost "has yet to be made", and if consultation was needed with Shital Prasad Jain then N. C. Roy should send all other accounts as prepared for the previous half-year ended 31st December 1946, which he (Shital Prasad Jain) would discuss with Shanti Prasad Jain who was expected in Delhi for a few days.

(iii) Letter dated 11th June, 1948, from N. C. Roy to Shital Prasad Jain (Ex. 391/144) indicates that the cost of sales of vehicles taken for the half-year ended 30th June, 1947, was the same cost as had been taken for the preceding half-year ended 31st December, 1946, the cost per unit having been fixed "from your end" (namely from Delhi), and as regards new types sold during the half-year ended 30th June, 1947, he had taken 50% of the sale price as "cost".

(iv) On 5th July, 1948, N. C. Roy wrote to Shital Prasad Jain (Ex. 391-P. 100) giving two proformas of joint venture accounts for the half-year ended 30th June, 1947. In both of these, the profits were maintained at Rs. 16,96,000. The alternative suggestions were :—

- (a) To increase the cost of the vehicles by Rs. 1,31,878.1.10, or
- (b) Alternatively, to increase the cost of sales of stores by Rs. 3,79,745.11.9 and decrease the cost of sales of vehicles by Rs. 2,47,867.1.10, so that the pre-determined profits of Rs. 16,96,000 for the half-year ended 30th June, 1947 were maintained.

This letter in itself shows how Allenberry was playing about with the "cost of sales" of vehicles and spare parts. In the course of argument on behalf of Shanti Prasad Jain, Mr. C. C. Shah tried to convince us that the language of Shital Prasad's letter was unfortunate, but when it was shown to him, that there was anyhow a difference of Rs. 1,31,878.1.10, he conceded that this was so, but added that after all this was a small figure. We pointed out to him that if the intentions of Allenberry were honest, they could have given half of this so-called "small figure" to D. J. Airways as its share of profits, instead of "fixing" the joint venture accounts to absorb the difference by inflating the cost.

(v) Again, for the half-year ended 31st December, 1947, Shital Prasad Jain wrote to N. C. Roy on 26th August, 1948 (Ex. 379-P. 10), in which he stated that unless Roy finalised the accounts of the sales and expenses, Shital Prasad Jain could not advise him the cost of sales.

(vi) In a letter, dated 27th October, 1948 (Ex. 379-P. 9) N. C. Roy wrote to Shital Prasad Jain that he had not passed any entry for the cost of sales of disposal vehicles and stores (pending his final instructions); and in the same letter solicited "any suggestions" from Shital Prasad Jain regarding the profit which, he stated, would help him a good deal to complete the accounts quickly.

(vii) On 29th November, 1948, N. C. Roy wrote to Shital Prasad Jain (Ex. 433/13) enclosing what he called the final provisional joint venture account which, to Shital Prasad Jain's horror, showed a loss of Rs. 10,92,248. N. C. Roy wrote also that the cost of vehicles had been arrived at on the basis of the June, 1947 accounts and indicated that this worked out to 65% of the sale price in the case of vehicles and 60% in the case of stores.

(viii) In reply to the aforesaid letter, Shital Prasad Jain wrote to N. C. Roy on 3rd December, 1948 (Ex. 379-P. 112) stating categorically that there was definitely no question of a loss for the half-year and even suggested that some items may be treated as pre-paid expenses "or otherwise cost of sales will have to be revised".

Even after the termination of the joint venture, there is correspondence to show that an *ad hoc* basis, to suit the circumstances, was still under contemplation, and this is shown by letter, dated 2nd September, 1949 (Ex. 267-P. 6) from N. C. Roy to Shital Prasad Jain at Delhi wherein the cost has been indicated at 60% of the sale value for both the vehicles and stores.

(ix) As far as the stores are concerned, how absurd the basis was is clearly indicated in a letter, dated 26th August, 1949 from H. D. Bishnoi to Shital Prasad Jain (Ex. 266) where Bishnoi pointed out to Shital Prasad Jain that the cost of sales actually charged up to 30th June, 1948 and contemplated to be charged for the half-year ended 31st December, 1948 and 30th June, 1949 amounted to Rs. 81,97,780 which far exceeded even the cost paid for the stores, namely, Rs. 50,00,000 without deducting the credit of Rs. 5,57,195 (incidentally it may be observed that during the joint venture period this credit was not deducted from the purchase price of Rs. 50,00,000 for the stores, before evaluating the cost of sales).

To sum up therefore :—

- (a) There was no rational basis for adopting the cost of sales either for the vehicles or for the spare parts;
- (b) The cost was taken according to pre-determined profits of the joint venture periods;
- (c) There was inflation of the cost of sales during the joint venture period which in turn reduced the profits of the joint venture. This will be dealt with later;
- (d) The method indicated by Shanti Prasad Jain quoting from page 88 of "Accountancy" by William Pickles was entirely theoretical or rather a story he tried to invent for his Written Statement and not what was followed in actual practice. According to the deposition of S. N. Verma (W. 50), the relevant data was available to arrive at the cost, and the costing was done according to that data and not on estimated selling price as made out by Shanti Prasad Jain. Let us, therefore, see what S. N. Verma had to say.

When asked by Mr. C. C. Shah for Shanti Prasad Jain to explain the manner in which the cost was ascertained for making up the final accounts, Verma gave an elaborate explanation as follows :—

Ans. "When the U.S.A. forces were throwing up surpluses, with each lot or with each item they prepared a statement which was called WPB-3.

In this statement factory cost of the units concerned was mentioned. When the vehicles were purchased from the Disposal Department, SPB-3 statements were also handed over to Allenberry & Co. on the basis of which we worked out the cost of vehicles that we had taken, giving due attention to the various types at the time of the take-over. When the take-over had been completed of both the purchases, on the basis of these figures, the executives of the Company were able to tally the total cost of rupees five crores and twenty lakhs approximately. In the case of each vehicle, thus, we had a specific price.

Ques. Did your Accounting Department make up statement of cost of sale at the end of each 6 months' period in respect of the sales made till then?

Ans. Yes. We assisted the work of the Accounts Department to make up statement of cost of sales effected during a period of 6 months.

(Witness was shown Exhibit No. S/84—"Statement of costs of sales of the Disposals vehicles for the period ending 31-12-46", the other statement for the period ending 30-6-47 (396), third, for the period ending 31-12-47 (S. 85) and the fourth for the period ending 30-6-48 (S 86) and next for the period ending 31-12-48 (Exhibit 388).

Ques. You have explained the manner in which cost of sales were calculated. Would it be true to say that there was any inflation of costs of sale with a view to under-estimate the stock?

Ans. No, Sir. It would not be correct to say that there was any inflation of cost of sales, because the method adopted may not be conventional, but was fairly rigid."

Cross-examined by Petigara, Verma maintained that the cost of sales was based on SPB-3 prices.

Ques. "You told us (my recollection is that) that the basis of the cost of sales were certain sheets which you called SPB-3 received from the U.S. authorities?

Ans. Yes.

Ques. Have you got any of these SPB-3 sheets?

Ans. I do not have any. But there must be plenty of them in the records of the Company which have been seized.

Ques. I think you told us that you took these as the basis and worked the cost of sales according to working conditions. Did I correctly hear you? Did I make a mistake? How did you arrive at the cost of sales?

Ans. The cost of sales were more or less based on the SPB-3 prices. If there is any slight variation they had taken into consideration the conditions of the vehicles.

Ques. Now when you did go to Moran you must have noticed the conditions of the vehicles very generally?

Ans. I did not understand the question.

Ques. You inspected the vehicles at Moran?

Ans. We just had a glance. There were 20,000 vehicles. We just glanced from the jeep.

Ques. Did you take the condition of the vehicles to be very good ?

Ans. No.

Ques. Or Saleable ?

Ans. No.

Ques. You have taken into account that some of the vehicles would be unsaleable ?

Ans. Yes.

Ques. And you did take into account that some of it would be scrap ?

Ans. Yes.

Ques. What charges or percentage did you apply in arriving at the cost of the sales ?

Ans. I have already stated that so far as the new vehicles are concerned, we have more or less based on the SPB prices.

Ques. The new vehicles ?

Ans. Yes. Of course in the case of new vehicles there were various factors to be taken into consideration. Some of them were packed and have not been taken out of the packing cases. I take all these into consideration. The basis was SPB price. In the case of vehicles which require very few repairs, the percentage was 35% or 1/3 and others about 10%.

Commission. Do I understand that for each batch of vehicles of a certain make you had a price which proceeded from what you called SPB price ?

Ans. Yes.

Commission. So each vehicle was valued separately ?

Ans. Group of vehicles."

When witness was shown Exhibits 395 and 396, he had to concede that in many cases the cost of sales was taken at 50% of the sales.

Ques. "If you look at these items you will find a 50% basis has been adopted in respect of various items. I will give you the items from Pannel Delivery Van downwards. Compare it with Ex. 395. Please see Shri Roy's letter (Ex. 391/Page 145). You will find 50% of costing was taken.

Ans. They are not all 50%. From Pannel Delivery Van downwards on Ex. 396 showing cost per unit all the items are not half of the prices realised as shown in Ex. 395.

Ques. How many are 50% and how many are not ?

<i>Ans.</i> Pannel Delivery Van	Agrees, i.e. 50%
Mobile Workshop	Agrees
Scout Cars	That does not agree
GMC Bus	That does not agree
Commission Reconnaissance	Agrees
Trailor 2½ tons	Agrees
Diamond Tea Dump	Agrees

Bomb Service Chev, truck	Agrees
Semi Trailor	Agrees
Pick up	Agrees
Scrap and inclusive	Agrees
National Truck	Agrees
Tractors	Agrees
4 Trucks	Agrees
Bomb Trailor	Agrees
Lift Truck	Agrees
Bomb Trailor	Agrees
Lift Truck	Agrees
Car $\frac{1}{2}$ Truck	That does not agree
Compressor	Agrees"

The Commission then questioned him with regard to the uniformity of prices in the four Exhibits (Exs. 396, S/84, S/85 and S/86).

Ques. "There are 40 items incidentally right from the jeep up to the compressor. All the items came from the saleable category and from no other category. How do you know that they are only from saleable category ?

Ans. This is how it is shown in the statement, but I am not sure. That might be sold as scrap.

Ques. In the Depot Expenses for this half year, you have got a sum of Rs. 28,00,000. Was this cost based on the cost of saleable vehicles ?

Ans. You see here, Sir, a number of vehicles costed at certain price. It is possible that this is the *average price*.

Ques. Average of what ?

Ans. Average of non-saleable vehicles price and saleable vehicles price, supposing there are 15 vehicles, out of which 5 are saleable and 5 are of the lesser category. Then if the price of the first 5 is, say, a thousand rupees, the price of the second may be Rs. 800 and here the average price Rs. 900 may be given.

Ques. What that your system ?

Ans. There is no question of system, Sir. This is a statement which is showing the cost that had been debited to the joint venture.

Ques. Why do you require an average ?

Ans. Because for all these vehicles if one price is mentioned, it does mean that this is the price. There is no indication that this is the price of the saleable vehicle.

Ques. You said that is from one category ?

Ans. They look to be from one category, but it is possible that other categories may have been sold and average prices given, because there is no indication that this is the price of the saleable ones.

Ques. What was the necessity for an average then ?

Ans. In the sales they do not show the condition of the vehicle.

Ques. But the prices are different and different prices should be shown ?

Ans. That is different prices were realised for the first 5 and different for another 5, they should have shown differently. That is, if they realised certain price for 5 vehicles and those 5 vehicles were not of the prime quality, then they should have shown that they are pricing separately.

Ques. Would a total be enough ? I mean the total cost without having given an average ?

Ans. The total cost is enough. It seems totals are given here.

Ques. Totals are given, cost per unit is given as it would seem that it is a redundant column. Where is the necessity of showing the average cost per unit ?

Ans. Because per unit price may be of various types. Take an item of jeeps also. 1,424 jeeps were sold. It is possible that if jeeps of a lesser quality were sold, then price may be lesser than price of the lesser jeeps and the price per unit given here.

Ques. You extracted cost from the records and having done this, this is the total cost of 1,424 jeeps sold. In that case, was it necessary to mention the cost per unit which is not recorded in any records or books ?

Ans. It may be redundant column, Sir.

Ques. What purpose does it serve ?

Ans. The only purpose it serves here is to show the price of each and then it is multiplied and total is shown here.

Ques. You can arrive at a total in two ways. The first was by saying that the cost per unit is in the case of jeeps Rs. 2,500. Alternatively, you can arrive at it by taking from other vehicles the actual cost per classification and then reaching your total of Rs. 35,60,000. You told us that latter was what was actually done in reaching the total of Rs. 35,60,000.

Ans. Yes, Sir.

Ques. In that case, what is the purpose of showing a totally misleading and useless figure of Rs. 2,500 ?

Ans. I cannot say, Sir. Probably the intention was that cost per unit may be indicated. It would serve some purpose.

Ques. I would ask you to indicate what purpose it can serve ?

Ans. It can serve the purpose of showing the average cost that has been debited for each jeep.

Ques. I put it to you that you had no stock records and that you were evaluating these units at an *ad hoc* price ?

Ans. What is an *ad hoc* price, Sir.

Ques. According to the prices fixed by you for all kinds of conditions of vehicles and then seeing that the final total agreed. There was some *ad hoc* price either at the percentage of sales, as we have seen in so many cases this morning, or some other prices.

Ans. No. Sir. That is not correct."

Thus Verma maintained that the cost shown in the total column was the aggregate cost, irrespective of the average price per vehicle. He tried to maintain that the average price was arrived at by dividing the total cost by the number of vehicles sold thereby arriving at the price per unit. In view of his earlier assertions that the prices were based on SPB-3 list, he was asked whether the unit cost, so arrived at, would not mean a totally misleading and useless figure, his answer was that he could not say and probably the intention was that the cost per unit may be indicated. "It would serve some purpose."

The Commission then drew the attention of the witness, amongst other items, to the pricing of personnel carriers which were priced at Rs. 4,000 in Ex. S/84, Ex. 396 and Ex. S/86 and at Rs. 3,500 in Ex. S/85. He was also asked to explain how the 127 out of 128 personnel carriers were priced at Rs. 4,000 and only one at Rs. 3,500. His answer was :

Ans. "It is an average price, Sir.

Ques. Average of what ?

Ans. Average of the various sales.

Ques. We are talking of the cost of sales ?

Ans. The average cost of sales. That is what I submit, Sir.

Ques. They were all in the same condition or in varying conditions ?

Ans. There must have been some difference in condition.

Ques. Then how is it that the average in the three periods came to the same. You sold 11-average is Rs. 4,000, 61-average is 4,000 and 55-average is 4,000. Mixing up of the saleable, unsaleable, and scrap cannot be exactly the same ?

Ans. My submission is that in the first two periods almost all qualities were there, saleable and unsaleable. Many vehicles were better than the saleable vehicles. There were even brand new. There must have been variations in average. The cost of sales is constant.

Ques. Average of that only if mixing up of vehicles was in such numbers in each period that they brought out the same value ?

Ans. I agree with you, Sir. I say that the quality was prime quality and most of the vehicles the quality was the best."

In other words, what Verma had to say in substance amounted to

that the costing was based on an average of the different categories of vehicles sold. When told that this was impossible meaning that the different categories in each of the four half year joint venture periods could not exactly be in such denominations as to bring out the same price, he gave a very nondescript reply : "There should not have been any doubt if you had seen the vehicles."

Verma's evidence, therefore, can hardly be called reliable when he changed his stand so many times, but be that as it may, it is obvious that his evidence is at complete variance with the explanations given by Shanti Prasad Jain in his written statement. In any case, Verma's evidence shows that there was sufficient material available to arrive at the cost of sale, and therefore there was no need to take an estimated price as suggested by Shanti Prasad Jain.

We now come to the deposition of M. B. Kanan, a statistician in the employ of Sahu Jain & Co. Ltd. His evidence is based on statements which have been prepared by him and adopted in a manner to suit the needs of the case. He has admitted at various places, as we shall see, that the statements were based on assumptions and/or approximations. For example, in cross-examination by the Commission, his attention was drawn to the prices he had taken for jeeps in the categories of saleable at Rs. 2,500, non-saleable at Rs. 875 and scrap at Rs. 250 and his attention was also directed to the fact that he had adopted a constant figure of Rs. 2,500 per jeep for the whole of the joint venture period. His answer was :—

Ans. "Yes. According to me only saleable vehicles have been sold during that period. When unsaleable vehicles are in stocks, I have *presumed* that unsaleable vehicles have not been sold. That is my *assumption*."

Ques. Do I take it that in the joint venture period only item from the saleable category have been sold ?

Ans. Yes, that is my *assumption*, excepting those which are specifically shown as scrap and unclassified.

Ques. Is there nothing sold in the joint venture, according to your assumption, from unsaleable and scrap category ?

Ans. There may be some percentage because particularly in the case of jeeps in one half year it is not Rs. 2,500 but it is, I think, Rs. 2,200.

Ques. And if something was sold from the non-saleable and the scrap category, you made the assumption that every vehicle sold came out of the saleable category. Will that not inflate the cost of sales ?

Ans. It will."

Kanan was then asked to explain Ex. S/189. As an example, his attention was directed to heavy vehicles where he had classified 2,258 as saleable, 7,518 as unsaleable and 955 as scrap. He was told that his statement showed that 1,214 heavy vehicles had been sold during the joint venture period and that he had assumed that all these had come out of the saleable category and asked whether this was irrespective of the actual condition of the vehicles. His answer was in the affirmative. In other words, Kanan had assumed that everything that was sold in the joint venture period came out of the saleable category.

Kanan was then shown the following exhibits and his attention was drawn to the expenses incurred for reconditioning charges against each of the exhibits as follows :—

Ex. 425/p. 16	..	..	..	..	98,078-10-6	Reconditioning charges
Ex. 425/p. 15	..	..	..	..	3,37,977-8-9	(Stores and Parts Consumption).
Ex. 425/p. 15	..	..	..	..	4,04,587-13-6	(Wages Productive)
Ex. 425/p. 5	..	..	..	..	13,16,500-1-0	(Reconditioning Expenditure).

and he was asked whether in the view of these large amounts being debited to the respective joint venture accounts he still maintained that he was justified in taking all the vehicles as saleable. His answer was :—

Ans. "I have only tried to arrive at an *approximate apportionment* of the cost on the basis of the available data, because a proper basis of taking into account these expenses is not known to me, this information has not been taken into account in making the cost.

Ques. Something is not known to you, you have taken what is contained as the cost of sales and worked out, proceeded backwards?

Ans. Whatever basis was available I have worked out. Of course that was *approximate*. This is all I have tried to assume. No doubt as you have rightly stated, that the consumption of stores and the reconditioning expenses have naturally to be allocated to the expenses and will have an important bearing on the cost of vehicles which have actually been reconditioned to which these expenses relate."

It should also be mentioned that Kanan stated that Ex. S/188 in which he had shown the cost of sales of the stock taken over was prepared from Ex. No. 435. This Exhibit was apparently prepared under the instructions of S. N. Verma when the stocks were first acquired and it would appear from a letter written by N. C. Roy on 16th December, 1949 to Shital Prasad Jain (Ex. 263) that the accuracy of Ex. 435 is most questionable.

The above will clearly indicate that Kanan's statement was based on assumptions and is of no use whatsoever when considering what *actually* happened.

advantage of D. J. Airways to be disassociated with it, but the total sales affected after the joint venture period amount to at least Rs. 5,55,95,490. This figure has been arrived at as follows :—

Sales from 1st July 1948 to 31st Dec. (Ex. 65)	58,77,559	As per the audited accounts of Allenberry.
Sales from 1st Jan. 1949 to 31st Dec. (Ex. 66)	1,32,94,892	
Sales from 1st Jan. 1950 to 31st Dec. (Ex. 424)	1,16,77,430	
Sales from 1st Jan. 1951 to 31st Dec. (Ex. 419)	1,49,04,835	
Sales from 1st Jan. 1952 to 31st Dec. (Ex. 464/A)	40,74,113	As per the books of Allenberry.
Sales from 1st Jan. 1953 to 31st Oct. (Ex. 465/A)	31,54,919	
Feb. 1954 sale to Asia Udyog in one lump quantity. (Ex. 443)	60,00,000	
	<u>5,89,83,748</u>	
Even deducting the proceeds of the R-3A Plant proportionately from the sale price of Rs. 60,00,000 to Asia Udyog as follows:—		
	15,00,000	
	<u>2,46,58,742 + 15,00,000</u>	
	$\times 5,89,83,748 =$	33,88,258
		<u>5,55,95,490</u>

It may be noted that :

- the sales figures of Rs. 1,49,04,835 in 1951 included lump sales to six parties amounting to Rs. 66,37,600 (Exs. 413, 409, 405, 411, 410, 398).
- there was one lump sale to Asia Udyog in February, 1954 amounting to Rs. 60,00,000.

The lump sales would obviously be at favoured prices because the purchasers were buying large quantities wholesale.

It may be observed that the deduction of Rs. 33,88,258 from the sales on a proportionate basis due to the R-3A Plant being included in the February 1954 sale for Rs. 60,00,000 to Asia Udyog is not justified, although this was done to arrive at the figure of Rs. 5,55,95,490 mentioned on page 37 of the Statement of Matters. The reason for this is that it has subsequently been borne out in the evidence that the condition of the Plant was not good when it was taken over, and at the end it was broken up.

The evidence of S. N. Verma on this point in answer to questions by Mr. Petigara is as follows :—

Ques. "What was the condition of that plant when you took delivery ?

Ans. Condition of the plant was not so good and it had been over-rated by the Director General of Disposals because we had been informed that the output of that plant was 100 engines a day. Allen Berry could never achieve more than 23 engines a day.

Ques. Did it need any repairs ?

Ans. Yes. Most of the machinery was in a very neglected stage and some units had been dismantled. With the exception of two

landis grinders, which were very useful unit, the rest of the machinery was not of as good value as it had been valued."

Ques. "Tell us what happened ultimately to this R-3A Plant?"

Ans. This plant had to be broken up and various units were distributed and some of them were scrapped."

We are, therefore, justified for the purposes of the following calculations, to take the sales to be at Rs. 5,89,83,748.

We shall now assume that the figure of Rs. 5,89,73,748 represents the sale of the entire stock, and that no further stock remained after the sale to Asia Udyog. However, this figure of sales will have to be increased by Rs. 16,27,258 being the understatement of sales for the half-year ending 31-12-48, as mentioned in Chapter I of Volume IV, Part 1. The aggregate post-joint venture sales therefore amount to Rs. 6,06,11,006. The cost of stock at the termination of the joint venture period was determined by Allen Berry at Rs. 2,76,90,197 and the percentage of cost to sales works out to 45.6%. The percentage of expenses to sales for the two years ended 31st December, 1949 and 31st December, 1950 works out to 31.4%. Therefore, the aggregate total cost comes to 77.0% (45.6+31.4%) leaving a profit margin of 23%. This can well be compared with the meagre percentage of 8.8% during the joint venture period. The difference is 14.2% in the overall net profits. Even this percentage is based on the assumption that all the figures of sales, selling and depot expenses have been correctly reflected in the accounts and that there is no deflation of sales or inflation of expenses. The direct expenses for the half year ended 31-12-48 have not been taken into account while comparing the expenses of the joint venture period with the post-joint venture period for the reason that the expenses for that half year were inflated as commented upon in Chapter II of Volume IV, Part 1.

The difference of 14.2% profits on Rs. 4,63,83,283 being sales of the joint venture period, results in the suppression of profits to the extent of Rs. 65,86,426, which together with Rs. 14,97,347 of profits fraudulently diverted to DCPM on the 2323 vehicles, brings out the total suppressed profits at Rs. 80,83,773.

end of the joint venture still to be sold; and out of total quantity of stores purchased namely 22,302 tons, not less than 19,100 tons of stores were left over when the joint venture was terminated. In addition, we would refer to Ex. 414 of 1st February, 1961 which is a letter from one H. G. Edward of Hazra Road to one Harbans Kishore of Daryaganj office in which the former mentions that the possibility of exports of Dodge parts to Hong-kong for Rs. 50,00,000. Similarly, Ex. 384 of 28th March, 1950 which is a letter written by Williamson to R. Dalmia with copies of cables exchanged between him (Williamson) and one Mr. Keohane, in which the latter asked for quotations and enquired about the availability of 1,100 unused assorted units. Williamson's cable indicates that he offered 1,450 assorted vehicles, of which 650 were new. This further shows that valuable stocks were left over at the end of the joint venture period.

Two glaring conclusions arise from the above :

- (a) that the Disposal Business was a very profitable business; and
- (b) due to the kind of manipulations mentioned above, the profit during the joint venture period was kept at as low a figure as possible; and when the financing partner (D. J. Airways) was no longer necessary, because by that time the sale proceeds were rolling in, it was dropped on the pretext of safeguarding its interests by making out that the Disposal Business was turning out to be unprofitable.

CHAPTER V

STATUTORY AUDITOR, P. S. SODHBANS AND THE ANTE-DATING OF THE AUDITED ACCOUNTS OF D. J. AIRWAYS

Introductory

We will now turn to the ante-dating of the audited accounts of D. J. Airways.

This is bound up with the conduct of P. S. Sodhbans, the Statutory Auditor of D. J. Airways. As separate notices were sent to him regarding his audits of these accounts it will be more convenient to pin-point the allegations made against him here in order to avoid needless repetition at another stage. The frauds that we are considering were effected with the assistance and connivance of the auditor so it is impossible for us to disassociate him from them. As a consequence, we were obliged under the Rules to issue separate notices to him. It will therefore be necessary to examine his conduct with special reference to the allegations made against him at some stage. That being so we consider that it will be the better course to direct this part of our report to P. S. Sodhbans. This will automatically bring in the ante-dating of the accounts.

P. S. Sodhbans

Sodhbans was the Statutory Auditor of D. J. Airways throughout the life of the company until the day of its going into voluntary liquidation on 13th June, 1952. As we have seen before, the entire business of this company was to deal in Disposal goods in joint venture with Allen Berry apart from a few stray air charters. Under the agreement, dated 26th August, 1946 between D. J. Airways and Allen Berry in respect of the joint venture (Ex. 36), Allen Berry was charged with the responsibility of keeping proper accounts concerning the joint venture and to prepare every half year ending December and June proper Trading and Profit and Loss Account of the joint venture. As the joint venture commenced sometime in August, 1946 and was terminated as of 30th June, 1948, four half yearly accounts were necessary for each of the half years ending 31st December 1946, 30th June 1947, 31st December 1947 and 30th June 1948. The accounts of the joint venture were audited by Sodhbans and for each of the half years they bore the following dates :—

Half year ended	Date of the Joint Venture Accounts statements.
31-12-46	25-10-47 (Ex. 58)
30-6-47	10-12-47 (Ex. 59)
31-12-47	20-2-49 (Ex. 60)
30-6-48	20-2-49 (Ex. 61)

2. The audited accounts of D. J. Airways during the period of the joint venture were for the years ending 30th June 1947 (Ex. 32) and 30th June 1948 (Ex. 33) and these accounts bear the dates, 15th December 1947 and 8th March, 1949.

3. The charge against Sodhbans is that the joint venture accounts which he audited on behalf of the joint venture were audited much later than the dates given on the accounts as mentioned in paragraph (1) above and that he signed the statements at a much later date knowing that he was doing so because, when he completed the statutory audits of D. J. Airways on 15-12-47 for the year ending 30-6-47 and on 8-3-49 for the year ending 30-6-48, the audit of the joint venture had not been done and the profit from the joint venture which was incorporated in the accounts was a pre-determined figure which had to be somehow substantiated.

4. There is ample evidence to indicate that the joint venture accounts for the four half years from 31-12-46 and ending 30th June 1948 were signed on dates much later than the dates on the accounts and in some cases incomplete up to 3rd May, 1951. The detailed particulars are as follows :

(i) On 17th March 1948, Shital Prasad Jain wrote to L. N. Sud of Allen Berry at Calcutta (Ex. 391/P. 186) and referred to the fact that the Trial Balances of Lucknow and Lahore Branches for the two half yearly closings of 1947 had not been forthcoming and issued necessary instructions in this behalf and further asked L. N. Sud to refer the matter to Shanti Prasad Jain in case of default by the branches.

(ii) On 25th May, 1948, Shital Prasad Jain wrote to N. C. Roy (Accountant of Allenberry at Calcutta) (Ex. 391/P. 235) and asked him to close the joint venture accounts for the half year ending 30th June, 1947 without further delay. He emphasised that :

(a) the joint venture profits for the half year had already been worked out and the credit advice for this had been issued to D.J.A. for their closing as at 30th June, 1947.

(b) D. J. A. had already filed their income-tax returns for its year ended 30th June, 1947 and were constantly reminding Allen Berry to give them a final statement of Disposal Business up to 30th June, 1949.

(iii) On 1st June, 1948, N. C. Roy from Calcutta forwarded to Shital Prasad Jain at New Delhi (Ex. 391/P. 178) two alternative pro formas for the joint venture accounts along with the accounts of Allen Berry as on 30th June, 1947. N. C. Roy sought advice as to which of the two pro formas should be adopted.

(iv) In his reply of 7th June, 1948 (Ex. 391/P. 169) Shital Prasad Jain called for further explanations and information pertaining to the accounts for the half year ending 30th June, 1947. In this letter, Shital Prasad Jain specifically pointed out that "You will also remember we had already advised profits for this half year to D. J. A. as Rs. 8,48,000 and we have to maintain...."

(v) On 11th June, 1948, N. C. Roy replied to Shital Prasad Jain and solicited his advice on some of the points concerning the accounts (Ex. 391/P. 144-145).

(vi) On 5th July, 1948 (Ex. 391/P. 100), N. C. Roy forwarded to Shital Prasad Jain two alternatives pro formas in respect of the joint venture accounts for the half year ended 30th June, 1947. In this letter, N. C. Roy suggested certain adjustments to maintain the total joint venture profit at Rs. 16,96,000.

(vii) On 21st July, 1948 (Ex. 391/P. 91), Shital Prasad Jain informed N. C. Roy that he had spoken to the Manager of the Lucknow Branch who had stated "that as yet accounts for the half year ended 30th June, 1947 were nearing completion...."

(viii) N. C. Roy wrote to Delhi Office of Allenberry on 1st May, 1951 (Ex. 268/P. 23) in the course of which he made the following points :—

- (a) The Income Tax Officer at Dacca had called for the audited report on the joint venture accounts for assessing the profits for the two half years ended 30th June, 1947 and 31st December, 1947.
- (b) When the Calcutta Office of Allen Berry contacted their auditors, H. P. Khandelwal & Co., in this matter they expressed their inability to give a certificate without checking the books of accounts to their satisfaction. A message was accordingly sent to that effect by Calcutta to R. Sharma at Delhi on 1st May, 1951.
- (c) The Calcutta Office feared that they could not produce the joint venture accounts.
- (d) Specific instructions were, therefore, solicited from the Head Office on all these matters and it was suggested that Delhi might discuss this matter with the auditors on the telephone and give the necessary advices.

(ix) Meanwhile, N. C. Roy received a letter dated 1st May, 1951 and wrote again on 3rd May, 1951 (Ex. 268/P. 20) and the contents show that :—

- (a) The Calcutta Office received on 1st May, 1951 a directive from Delhi to see the auditors again for having the joint venture accounts for the two half years ended 30th June, 1947 and 31st December, 1947 audited without further delay.
- (b) Accordingly, the auditors were contacted who stated regarding the proposed audit that there was no question of auditing the books of the joint venture so no set of books had been maintained as such and the audit of the accounts would be possible if the relevant ledger accounts as maintained by Allenberry with the supporting vouchers etc. were made available. The auditors also stated that the mode and the form of audit would accordingly be mentioned in the audit report and the joint venture accounts would be certified *on the date when the audit was actually completed and not as of the date when the audited accounts of Allenberry were certified.*

already been pre-determined before the joint venture accounts were prepared) but because of the considerations of producing the accounts before the Income-tax authorities and for giving a colour of genuineness to the pre-determined joint venture profits.

(1) From the above, it is quite clear that the accounts of the joint venture were not audited on the dates which the accounts bore and which have been shown in paragraph (1) above. Sodhbans has signed all the joint venture accounts for the four half years ending 30th June, 1948 (Exs. 58 to 61) and there is further supporting evidence to show quite clearly how the accounts have been ante-dated :—

(i) Sodhbans has signed the accounts in the name of "Sodhbans & Co., Chartered Accountants". The last of the accounts for the half year 30th June, 1948 bear the date 20th February, 1949 and the earliest accounts for the half year ended 31st December, 1947 bear the date 25th October, 1947. The Chartered Accountants Act, 1949 came into force on 1st July, 1949 and it is only after the coming into force of this Act that Sodhbans could describe himself as a Chartered Accountant. Similarly, the folders in which the Exs. 58 to 61 were enclosed described Sodhbans & Co., as "Chartered Accountants, New Delhi".

(ii) In his examination-in-chief on 20th January, 1959, Sodhbans (W. 2) made the following statements :—

"From 1932 to 1949 July or August I described myself a Registered Accountant. I never described myself in any other way before July or August, 1949. Only those who were qualified accountants called themselves Chartered Accountants. By qualified accountants, I mean those with English qualifications that is to say those who were members of the English Institute of Chartered Accountants. I was not one of these. I, therefore, could not have called myself a Chartered Accountant before July or August, August, 1949 because I was not a member of the English Institute".

"It was only after my registration in July, 1949 that I began to describe myself as a Chartered Accountant. I am quite sure that I never described myself as a Chartered Accountant before that date. Therefore, whenever I have described myself as a Chartered Accountant it is after July, 1949 when I was registered. When my register folders describe me as a Chartered Accountant, it means that the contents of the folders were after my registration as Chartered Accountant. Sometimes, I used old folders that were not exhausted even after I was registered as a Chartered Accountant. *But it was never the other way round that is to say I never described myself as a Chartered Accountant before I was registered as such.* The folders and letter papers describing me as Chartered Accountant were printed after my registration and after my old stock was exhausted."

(iii) All the above depositions were made at the outset of Sodhbans' examination-in-chief, and later on when he was shown Exs. 58 to 61 but not the dates on the respective accounts, he stated that he must have signed as a Chartered Accountant which meant that he must have signed after 1st July, 1949 as he was not a Chartered Accountant before that date. He admitted that all copies of Exs. 58, 59 and 60 in triplicate were signed by him as well as Ex. 61 in duplicate. He admitted also that the folders were the same in all the cases and further admitted that all these documents that had been signed by him as Chartered Accountant could only have been signed after 1st July, 1949. However, when he was confronted with the dates which

the respective statements bore, he started to give feeble explanations that the Exhibits shown to him may have been copies of original ones signed by him before on the purported dates and in making the copies the typist must have by mistake described him as a Chartered Accountant, and therefore he tried to maintain that the mistake could not have been made in the original documents.

(8) In the Dalmia concerns, Sodhbans was the auditors amongst others of the following companies :—

Dalmia Jain Airways Ltd.,

D. J. Aviation Ltd.,

Dalmia Dadri Cement Ltd.,

Bharat Insurance Co. Ltd.,

Bharat Fire & General Insurance Co. Ltd.,

Lahore Electric Supply Co., Ltd.

In each and every case, Sodhbans has described himself as a Registered Accountant in his respective reports on the accounts signed upto 30th June, 1949, and thereafter as a Chartered Accountant.

(9) From the above overwhelming mass of evidence, there can be no doubt that the accounts of the joint venture were ante-dated for purposes other than for showing a true and correct view of the accounts of the joint venture to the partner, namely, D. J. Airways, being a company in which the public had invested largely. The purposes as we have stated above were to give a genuine colour to the accounts for income-tax purposes as well as for maintaining the profits shown to D. J. Airways, the partner, the profits being pre-determined irrespective of the true and correct state of affairs. In acceding to the wishes of the management in this respect, Sodhbans allowed himself to be their willing tool and is, therefore, squarely, guilty of signing documents which he knew were ante-dated.



CHAPTER VI

TERMINATION OF THE JOINT VENTURE

And now we reach the peak in this series of frauds : the termination of the joint venture.

The joint venture agreement, Ex. 36, is said to have been terminated on 30-6-48. The letter of termination is Ex. 37. It is dated 11-6-48.

On the date of the termination the directors of D. J. Airways were (1) Shanti Prasad Jain, (2) J. Dalmia, (3) J. M. Gupta and (4) R. K. Jain; and those of Allenberry were (1) Shanti Prasad Jain, (2) R. P. Bajoria and (3) Raizada Brijmohanlal. R. Dalmia was not a director of either company, but he was looking after the affairs of D. J. Airways on behalf of the managing agents, Dalmia Jain and Co. Counsel for Shanti Prasad Jain and J. Dalmia contended in argument that the termination was ante-dated and that the letter of termination, Ex. 37, was a blatant forgery executed at a time when Shanti Prasad Jain and J. Dalmia were not directors and so could not be saddled with even indirect responsibility.

Counsel for Shanti Prasad Jain and J. Dalmia both said explicitly that they made no attempt to justify the termination. All that they contended was that their respective clients knew nothing about it and had no hand in it because, even if it (the termination) was on 30-6-48, they had ceased to take any part in the management of the two companies after 31-5-48 and so did not know what was going on in them.

Shanti Prasad Jain was questioned about the termination in the witness box. He was reminded that he was a director in both these companies on 11-6-48, the date of the letter of termination, Ex. 37 and that according to his own admissions, he had taken an active part in the management up to 31-5-48. So he was asked,

"In the circumstances, with the knowledge you have of these companies, and particularly of the joint venture, do you think that the termination was justified ?

His reply was,

"I cannot express any opinion."

He was then pressed further and when he found that he could not hedge any more, he said,

"It is a very hypothetical question and if you want me to reply I would not have done it, that is, I would not have terminated the agreement."

R. Dalmia did not file a written statement and made no attempt to controvert the allegations made by us. We will therefore examine the attitude of the others.

We have already said that Shanti Prasad Jain and J. Dalmia disclaim all knowledge and responsibility.

J. M. Gupta said in his written statement,

"The decision to terminate the joint venture agreement... was taken at the highest level by the D. J. Group. I was no party to it.. Discussions between me and Raizada Brijmohanlal could not be anything more than adopting the decisions taken by the members of the D. J. Group. *It is inconceivable that an employee of my status could have taken a decision of such importance.*

Counsel for Shanti Prasad Jain and J. Dalmia agreed with this, though they repudiated J. M. Gupta otherwise. They said that a decision of this kind could only have been taken at the highest level and not by these lesser fry. The only question, according to them, is, who were at the highest level at that time. According to them, the responsibility for these decisions rests squarely on the shoulders of R. Dalmia alone.

We will only remark at this stage that neither said so frankly in their written statements nor did they say so in their evidence; nor did they attempt to bring this out openly through their witnesses. Their attempt at that stage was to throw the blame on these stooges who appeared in the forefront. They took refuge behind the technicalities of the corporate existence of companies and said that the directors were in charge and control of the affairs of the companies, and that they were the ones who made the decisions; when however it came to a stage of fixing the responsibility on Shanti Prasad Jain and J. Dalmia as directors, their plea was that though they were directors in name they were not responsible for anything that was done after 31-5-48 because they had ceased to take interest in these companies after that date.

J. M. Gupta said in the witness box as W. 4, that, as far as he could remember, there was some discussion about the termination among the directors, namely Shanti Prasad Jain, J. Dalmia, R. K. Jain and himself.

R. K. Jain disclaimed knowledge of and responsibility for the termination. He said that he had no hand in it.

On Allenberry's side the statements were as follows :—

H. D. Bishnoi said,

"The termination... was effected with the consent of D. J. Airways and the answering respondent was in no way connected with D. J. Airways. Consequently he is not in any way responsible for the termination."

Raizada Brijmohanlal said that the joint venture terminated because both parties concurred; and in any case, he had no deciding voice in the matter.

In his evidence, Brijmohanlal said that he had no recollection of the termination. He could not say whether he signed the original of Ex. 37 because his signature was not on the copy; but that if he did sign,

"It would have been done at the instance of R. Dalmia and Shanti Prasad Jain as they were managing those concerns."

He added that,

"He would have been asked to sign for reasons best known to themselves."

R. P. Bajoria did not file any written statement.

R. Dalmia threw the responsibility for the decision to terminate the joint venture on the directors of D. J. Airways. He said in his affidavit before the Bombay High Court,

"It was therefore decided by the Board of directors of the company to sell their share in the partnership business to Allenberry.. at cost."

Their written statements cannot be accepted as evidence against any but themselves. But it is necessary to examine their defence; and it is also relevant to take their statements into consideration when assessing their worth as independent directors, because they are the only persons who could have reached these decisions at the directorate level; and legally it is necessary for the directors to decide matters of this nature.

So far as their statements are concerned, it may well be, as counsel urged, that each is trying to evade responsibility and throw the blame for an admittedly shady deal on others. But that is a criticism that applies with much greater force to their own clients.

We refer to the statements that we have quoted because what these directors say about their having been mere cyphers is corroborated by the arguments of counsel for Shanti Pd. Jain and J. Dalmia. Counsel damned them all : utterly and completely.

Now if these persons and the arguments of counsel reveal the truth, then who acted on behalf of D. J. Airways? Who made the decision on its behalf to terminate the joint venture? We agree with counsel, and with what J. M. Gupta said in the witness box, namely, that the decision to terminate the joint venture could not have been taken by any of these cyphers and that it must have been reached at the highest level. But which of the three members of the group were then operating at that level?

Shanti Prasad Jain and J. Dalmia said in their written statements that they were "not responsible" nor were they "parties" to either the termination or to the decision to terminate because they "ceased to be interested" from and after 31-5-48. They did not however say that they had no knowledge about the termination. But when Shanti Prasad Jain entered the witness box he said that he was not even aware of the termination :

"Q. You have told us that the administration of the companies was in the hands of the Board of directors.

A. Yes.

Q. Do you wish to suggest that as a director in both companies you were unaware of the termination of the agreement.

A. Yes. I was not aware of the termination of the agreement.

Q. Prior to 11th June, 1948 do I understand that the question of the termination of the agreement was never raised between you and R. Dalmia and J. Dalmia.

A. No Sir."

We are not able to believe this. Of course, he must at least have heard about the termination. He admitted that he was actively concerned with the management of both companies, at any rate so far as the joint venture

is concerned up to 31-5-48. It is proved that he played a most important part in the formation of the partnership and in the buying of the vehicles and stores; also in the transfer of the R3-A Plant. He admitted in his application of 1-3-60 that at the "partition" it was agreed, in the interests of each others business, that the implementation of the separation by cessation of directorships and change of managing agencies,

"should be carried out in such manner as not to dislocate the continuity of the business of the said companies."

In his evidence he explained the position thus :

"If any officer is the director of any other company which went to the influence of other person, *the other person will remain the director of that company only at the discretion of that person, the person to whose sphere of influence the company has gone. He will be just an outside director.*"

When Mr. A. C. Mitra argued the case of partition on behalf of J. Dalmia he explained the position thus,

"even if I remain on the Board of Directors I dance to the tune of person to whom the company went."

Now Shanti Prasad Jain admits that he remained on as a director of both D. J. Airways and Allenberry after 31-5-48 and that he was a director on 30-6-48 when Ex. 37 purports to have been signed. According to him both the companies went to the "sphere of influence" of R. Dalmia. Therefore, on his own admission, he could only have remained on as a director in these two companies *at the discretion of R. Dalmia*; and, according to Mr. A. C. Mitra's explanation of this, Shanti Prasad Jain's duty as director in these companies after 31-5-48 was to "dance to the tune of R. Dalmia."

Neither of these two statements conveys the idea of a complete cessation of interest and responsibility; and of course, that could not be the fact. Unless there was some point in staying on the resignations would have been immediate.

But, quite apart from all this, we find it impossible to believe that members of this family who were so close to each other till 31-5-48, and who, according to Shanti Prasad Jain, continued to be on the best of terms even after the separation, would not, within a month, know anything about as big an upheaval as this in their own world and in the business world generally.

That was also Mr. Mitra's argument when he was dealing with his case that the termination was not till March 1949 and that Ex. 37 was ante-dated. He said just what we have said,

"a termination of this magnitude would have been known earlier if it had taken place in June 1948."

He was dealing there with the knowledge of the shareholders. If that was the position with outsiders how much more would it have been the case with those who were so intimately connected with the family and with the affairs of these two companies. We do not believe Shanti Prasad Jain and are of the opinion that he knew and that he was actively associated with the termination.

S. N. Verma was called as a witness by Shanti Prasad Jain who relied strongly on his evidence on other matters. In any event, Verma was by no means hostile to Shanti Prasad Jain. He was asked a number of questions about the position of Shanti Prasad Jain in the affairs of Allenberry before 31-5-48. We will group the questions and answers under different heads.

We will first see what he tells us about those who were in real control of Allenberry's affairs.

"Q. Whose decision did you carry out?—the Board of Directors or R. Dalmia ?

A. Most often R. Dalmia and Shanti Prasad Jain up to May 1948.

* * * *

A. I had no concern with the directors except Shanti Prasad Jain and R. Dalmia.

* * * *

Q. Would you name the persons whom you considered to be in authority ?

A. (1) R. Dalmia, (2) Shanti Prasad Jain; and if they had given any instructions they had to be carried out.

* * * *

Q. Does that mean that you took instructions from *only* Shanti Prasad Jain and R. Dalmia ?

A. Yes and nobody else."

Next we will see what he tells us about those who were responsible for Allenberry's accounts.

"A. Accounts *department* was supervised by Shanti Prasad Jain and subsequent to May 1948 by Shital Prasad Jain.

* * * *

A. The *accounts* were supervised by Shanti Prasad Jain.

* * * *

A. In Nov./Dec. 1947 the *accounts* were looked after by Mr. Shanti Prasad Jain."

Next we will see what he tells us about those who were responsible for in the affairs of the joint venture.

"Q. Was the joint venture looked after by Shanti Prasad Jain ?

A. Yes, up to May 1948."

From there we will pass on to Shanti Prasad Jain's responsibility in connection with the Joint venture accounts.

"A. This is a joint venture account. Allenberry were not concerned with that. Allenberry was carrying out the business of the joint venture as *Allenberry*. The *accounting* part was under the supervision of Shanti Prasad Jain.

* * * *

S. N. Verma was then asked what *his* responsibility was, as General Manager, in respect of the joint venture accounts.

"Q. Who checked their correctness ?

A. Shanti Prasad Jain."

Lastly we will see what he says about the position of Shanti Prasad Jain *at the date of the termination of the joint venture.*

"Q. Who were the directors at the time the agreement terminated ?

A. I remember Raizada as one of them and Shanti Prasad Jain had not been *relieved*."

It is also evident from other parts of this witness's evidence that he regarded everybody else as cyphers in this company. For example, here is his opinion of a man who has been relied on by Shanti Prasad Jain very strongly as one of the financial pillars of the group.

"Q. Will you go through this letter and agree with me that Shital Prasad Jain was in charge of the accounts of Allenberry even in September 1947 ?

A. No. I can only say that he talked a lot of nonsense here.

Q. Do you say that he wrote this totally irresponsible ?

A. Of course."

We will pause here to remark that there seem to have been a remarkable number of "irresponsible" persons in charge of the affairs and accounts of these concerns. We have already drawn attention to two of Shital Prasad Jain's letters (Ex. 106 and 116) in which he suggested manipulation of the accounts, without, however, actually using the word; and also to N. C. Roy's letter Ex. 268/20 in which he suggests manipulation, as well as to a letter of D. N. Banerjee (Ex. 413A) where he uses the same word. Even at the directorate level no director ever seems to have known anything about what was happening. Even J. Dalmia's counsel described his client as "the biggest dummy of them all"—a description which we think is probably true. But to get back to the evidence of S. N. Verma.

A. I do not think that any directions given by Shital Prasad Jain would be followed at that time without reference to Shanti Prasad Jain."

He was asked about J. M. Gupta and he said,

"A. I would not take any instructions from J. M. Gupta.

Q. Can you tell us why ?

A. Because he, *as far as I know*, was not Shanti Prasad Jain or R. Dalmia."

These passages show,

- (1) the extremely important position that Shanti Prasad Jain occupied in Allenberry;
- (2) particularly in all matters relating to the joint venture and the joint venture accounts; and
- (3) that he had not been "*relieved*" as a director when the joint venture terminated.

Now this word "*relieved*" imports something stronger than mere non-attendance at meetings and sudden lack of interest, especially in the case

of a man who to all intents and purposes was Allenberry. And what S. N. Verma says on this point is strengthened by Shanti Prasad Jain's own statement that the others stayed on as directors at the discretion of the persons to whom the company went at the "partition." Add to this Mr. A. C. Mitra's explanation and Shanti Prasad Jain's further statement that the idea was not to disrupt the continuity of the business, and we cannot but reach the conclusion that Shanti Prasad Jain's continuance as a director was not just aimless fatuity.

Before we examine the case of ante-dating that was raised by counsel for Shanti Prasad Jain and J. Dalmia for the first time during the arguments, we will set out the fact on which we rely to show that the termination of the joint venture was not only improper but fraudulent. As we have said, this position is not controverted by counsel for Shanti Prasad Jain and J. Dalmia. On the contrary, they make it out to be an even bigger fraud than we had alleged and they drag in issues about forgery and so forth. But, as others are also involved, it will be necessary for us to base our conclusions on evidence and not proceed merely on the admissions of counsel. Also, we do not want to run the risk of being told again that counsel had exceeded their authority.

According to Ex. 425/20-24 the total of the purchases made by the joint venture from the Director General of Disposals up to 14-6-47 came to Rs. 5,86,32,500. The balance due was said to be Rs. 2,56,32,500. From this Rs. 10 lacs has to be deducted leaving Rs. 2,46,32,500. It follows that the payments made up to that date were Rs. 340 lacs. Shanti Prasad Jain said in his written statement that by 30-6-47 the payments had risen to Rs. 366 lacs.

The figure Rs. 5,86,32,500 includes Rs. 15 lacs for the R3A Plant which, according to Shanti Prasad Jain, was not then a partnership liability. Therefore, the half share of D. J. Airways in the balance of Rs. 5,71,32,500 was Rs. 2,85,66,250. According to Shanti Prasad Jain also the half share was Rs. 2,85,66,250.

The payments to the Director General of Disposals exceeded the Rs. 285 odd lacs that was the half share of D. J. Airways in the total purchase price. According to the interpretation put by Allenberry on Ex. 36, D. J. Airways had to pay its half share of the total price first. That, as we see, it did in full by 14-6-47. Shanti Prasad Jain also admitted in his written statement that D. J. Airways had paid Rs. 4,10,456-3-8 more than its half share of Allenberry by 30-6-47. Therefore the obligations of D. J. Airways under Ex. 36 regarding its contribution to the purchase price were discharged in full.

Under Allenberry's interpretation of Ex. 36 the time had now come for Allenberry to carry out its undertaking and complete the payments to the Director General of Disposals out of the sales of the surplus vehicles and stores.

According to the figures given by us in our statements of matters the sales realisations up to 30-6-48 exceeded the Rs. 285 odd lacs that represented Allenberry's half share in the purchase price for the vehicles and stores. We said therefore, that as the stage had now been reached when Allenberry would have to begin returning the contribution made by D. J. Airways, the D. J. Group terminated the joint venture and rubbed D. J.

Airways of all its assets in the joint venture by putting forward a fraudulent scheme of termination.

Shanti Prasad Jain contested our figures and said that the total sales realisations up to 30-6-48 were only Rs. 2,00,53,000 because we had omitted to take into consideration the fact that the sales were often on credit and so there were large debits against the gross sales in the Customers ledger.

If this is accepted, then it follows that the time had not yet come when, according to Allenberry's interpretation of Ex. 36, it would have to begin returning D. J. Airways its Rs. 285 odd lacs.

We will not stop to quarrel over accounting because, even accepting Shanti Prasad Jain's figures, the time was fast approaching when that would have to be done; and that is enough for our purpose.

The D. J. Group also found that the joint venture business was making large profits which Allenberry did not want to share with a public company, so in order to obviate the repayment and the sharing of the profits the joint venture was terminated. The lack of good faith in this matter will be evident from the following facts.

D. J. Airways had only two businesses, the airways business and the joint venture business. The airways business ran at a loss from the start and showed no signs of recovery. The direct loss during the joint venture period was Rs. 11,81,890 and the actual loss, including overheads, was Rs. 19,08,810.

This loss is deducible from the audited balance sheet of D. J. Airways as at 30-6-47 (Ex. 32). The profit on the sale of vehicles is shown there as Rs. 12,21,627-5-10; but the net profit carried forward to the profit and loss account is only Rs. 43,168-8-3. The difference of Rs. 11,78,458-13-8 represents the loss on the aviation side of the business and the indirect expenses.

In the next year's balance sheet (Ex. 33) the profit on the sale of vehicles in that year is shown as Rs. 10,49,243-9-9. But a profit of only Rs. 3,18,892-2-0 was carried forward to the Profit and Loss account. The difference of Rs. 7,30,351-7-9 was due to the loss on account of the aviation business.

The total loss on the aviation side during the two years was therefore Rs. 19,08,810. When the overheads are excluded the direct loss comes to Rs. 11,81,890.

As against this the joint venture business was making large profits. The joint venture accounts were badly manipulated so as to minimise these profits, but when the accounts are properly recast they disclose a profit of Rs. 1,26,25,515 i.e. disclosed profit of Rs. 45,41,742 and suppressed profit of Rs. 80,83,773. We shall deal with that in another place. At the moment it is enough to say that even their own audited accounts Ex. 32 and 33 disclose a profit of Rs. 45,41,742 in which the half share of D. J. Airways comes to Rs. 22,70,871. This works out to a yield of about 4% per year on D. J. Airways' investment of Rs. 2,85,66,250.

Now the capital of Rs. 2,85,66,250 that D. J. Airways invested in this business was almost fully secured because, even according to Allenberry's

records, the joint venture stock as on 30-6-48 was said to be worth Rs. 2,76,90,197, (Exs. 265, 61 and 389). According to us this figure is an undervaluation and if that was so the capital of Rs. 2,85,66,250 was fully recovered. We will deal with this in greater detail elsewhere. At the moment we will merely draw attention to what we saw in the case of the 2323 vehicles namely, that vehicles whose cost was estimated at Rs. 47,19,800 sold for more than twice that (Rs. 1,02,62,705) during the joint venture period in a short span of 10 months.

Another indication of the value of these stocks is that they were sold for at least Rs. 5,55,95,491 after the termination of the joint venture; in fact, the sales of a part only of these stocks between 30-6-48 and 31-12-50 fetched profit to Allenberry amounting to at least Rs. 70 lacs. The joint venture would have got these profits if it had not been terminated. This will also be dealt with in another place. All we will say here is that even according to their own books the capital of D. J. Airways was almost fully secured. There was therefore no point in ending the joint venture less than two years after its start just at the moment when the shareholders of the public company would begin to get a return on their investment. It must be remembered that from first to last not a pie was paid as dividend to the shareholders of D.J. Airways.

Also, apart from what these documents reveal, we have the public statement of Shanti Prasad Jain and the Directors of D. J. Airways.

Shanti Prasad Jain made a speech (Ex. 188) as Chairman of Allenberry at its annual general meeting on or about 27-2-47 and said that the disposal vehicles and stores part of Allenberry's business had "big potentialities" and a "bright future" before it. He was also a Director of D. J. Airways at that time. His optimism was evidently based on facts and is justified by the later developments. Anyway, he said that the deal in the purchase of the surplus vehicles had been "most successful" because

- (a) A "fair percentage" of the vehicles were "boxed and brand new";
- (b) Allenberry was able to turn out and place on the market the maximum number of vehicles at about 25% higher prices;
- (c) Jeep were sold at 25% higher prices than any other vehicles of a similar description; and
- (d) That during the first four months the Company had been able to realise 25% of its investments in disposal stock by 10% sale thereof.

Mr. Shah said that this was merely "salesman's talk" and should not be taken seriously. He said that Shanti Prasad Jain was talking in that vein for purely propaganda purposes. We do not agree, because the figures that we have set out justify his optimism. But if what Mr. Shah says about his client is true it only serves the more to damn him. Mistaken optimism can be excused when there is room for honest difference of view. But deliberately to draw a misleading picture for the purpose of deceiving cannot be condoned just because the purpose is propaganda.

The Director's Report of D. J. Airways (Ex. 33) signed by R. Dalmia, also says that the working of the company during the years ending 30-6-48 had been satisfactory and that they expected the future to be "bright".

What then was the reason for the termination? It will be easy to see why when we see who were controlling the two companies at that time and to whose interest it was to make this very one-sided deal. No further comment will be needed. Ex. 37 is the letter of termination. The control at that date was as follows. Again we give a side by side statement.

<i>D. J. Airways</i>	<i>Allenberry</i>
Shanti Pd. Jain (Director)	Shanti Pd. Jain (Director)
J. Dalmia (Director)	
J. M. Gupta (Director)	H. D. Bishnoi (Director)
R. K. Jain	R. P. Bajoria (Director)
R. K. Dalmia (Agent of Dalmia Jain & Co. Managing Agents)	Brijmohan lal Raizada (Director)

Now we will see how this termination was carried out. Both D. J. Airways (a public company) and Allenberry (a private company) were D. J. Group concerns and were controlled by it; and Allenberry was in exclusive management of the joint venture. The policy of the joint venture was directed by Shanti Prasad Jain and R. Dalmia both of whom also directed the policy of D. J. Airways. R. Dalmia was in addition the sole attorney of the managing agents, Dalmia Jain and Co. The termination agreement (Ex. 37) is signed by J. M. Gupta on behalf of D. J. Airways and by Brijmohanlal Raizada on behalf of Allenberry. J. M. Gupta is a self-confessed dummy. In the witness box he said that the only person he negotiated with was Brijmohanlal Raizada and that Brijmohanlal told him that if Shanti Prasad Jain had agreed to the termination he would also agree. It is clear that everything hinged on Shanti Prasad Jain as Director of Allenberry persuading himself as Director of D. J. Airways (he was then a common director to both companies) to agree to the termination; and, as all the terms were in favour of the private concern belonging to his family it is not difficult to see that it was easy for him in one capacity, to persuade himself in the other, to agree.

When Brijmohanlal was examined as a witness, he said that he had no real voice in the control and did not know what was happening. All he did was to sign papers that were put before him. He said that he was never consulted about the joint venture business and could not even remember whether there ever was such a thing. This may or may not be true. But it all narrows down to the fact that Shanti Prasad Jain who was a director of Allenberry at that time conducted negotiations with himself on behalf of D. J. Airways. He was a common factor. One would have expected that men like Shanti Prasad Jain and R. Dalmia would have insisted on independent advice for the partner company in these circumstances, if only for their own protections.

This witness was very severely attacked by counsel for Shanti Prasad Jain and J. Dalmia. It is true that he did not cut a happy figure in the witness box and that he confessed to many wrong. But it is equally true that, on the whole, he did not try to hide or cover up his faults. He showed a very pronounced animus against Shanti Prasad Jain and R. Dalmia

which is understandable. Shanti Prasad Jain wanted to have him recalled to the witness box so that he could cross-examine him further. We disallowed that for the reasons that we gave in our order of 18-1-62. In any case, the object of the application was not to prove more facts but to discredit him still further. There would have been no point in wasting time over that and still less justification for allowing Shanti Prasad Jain to abuse the procedures of cross-examination in order to exact revenge by imposing further humiliations. We recalled him once to allow Shanti Prasad Jain and J. Dalmia to cross-examine him and allowed counsel full latitude in cross-examining to credit. We have not relied on him, or any of these other witnesses who seemed of doubtful value, except where they are corroborated by what counsel themselves have said in the course of the arguments. So no prejudice has been caused to Shanti Prasad Jain who was given much more latitude than he would have been allowed in a Court of Law. But despite all the hard things that were said against Raizada Brijmohanlal there is this must to be said in his favour. He was then a young man only 22 years old. He had just left college and was at once made the director of an important company. Of course, he was completely at sea and was wholly under the influence of Shanti Prasad Jain and R. Dalmia. He would naturally do what they told him; and in his bewildered inexperience he would hardly know right from wrong in the maze of deceit that we find was practised in these companies by his older and more experience relatives.

Now see the terms that these gentlemen obtained for themselves, or rather for their concern, Allenberry. First, the whole of this valuable joint venture stock was transferred to Allenberry, according to them "at cost". We have seen that this was favourite device. Having used the money of D. J. Airways without interest for the purchase of these vehicles they proceeded to divert them from the public company "at cost" so that the public company would get no benefit of profit out of the transaction. We saw that that was done with the R3A Plant. We saw it done with the 2323 vehicles; and now we find it done with the whole of the remaining stock. We will find the same technique in other places when we deal with the supposed buying and selling of shares.

It is true there is no evidence to connect Shanti Prasad Jain and J. Dalmia with most of the later transactions so it would be improper to use them as evidence of their state of mind regarding the transactions that we have just mentioned; nor we intend to do so. We will not take into consideration any matter that occurred after dates on which they are not shown to have been connected with any given undesirable practice. But the ones that we have mentioned above can be used against them to show their state of mind, because they occurred in their time.

When we say that the vehicles were transferred "at cost" that is what *Allenberry* says in its books. Actually the transfer was well below cost as we will show when we come to deal with the question of undervaluation. The transfer was effected for Rs. 2,46,58,742 (Ex. 37 and Ex. 267/11) later changed to Rs. 2,76,90,197 (Ex. 398) whereas the true value at that time was *at least* Rs. 5,55,95,491 because a *part only* of the unsold stock on 30-6-48 was sold for that sum between 30-6-48 and February 1954. But even if we take them at their word it means that all this very valuable stock was transferred to Allenberry without a pie of profit to the public company.

Let us examine the stock position a little more closely. The following documents show the total amount of disposal vehicles and stores purchased from the Director General of Disposals.

Vehicles: 36,107 (Ex. 435) purchased as follows:

	Rs.	
on 11-7-46	1,80,00,000	Ex. 87
18-12-46	91,32,500	Ex. 89/90
2-8-46	2,50,00,000	Ex. 92
TOTAL ..	5,21,32,500	

Stores: 22,302 tons on 11-9-46	44,42,805	Exs. 94 & 425/1&18
R3-A Plant 27-8-46	15,00,000	Ex. 93
TOTAL ..	5,80,75,305	

Out of this the R3-A Plant was transferred to Allenberry "at cost". Later 2,232 vehicles are supposed to have been transferred to D.C.P.M. for Rs. 47,19,800 also "at cost". And finally, when the joint venture was terminated the unsold stock at the date of the transaction was said to be

Vehicles : 26,754 out of the 36,107 purchased (Exs. 372 & 387).

Stores: not less than 19,100 tons out of 22,302 (Ex. 371).

The two together were valued at Rs. 2,46,58,742 subsequently changed to Rs. 2,79,60,197 (Ex. 398) and were transferred "at cost". A glance at these figures will show that this was a gross undervaluation. The proper valuation, was much higher. But even on their own figures it means that 29,077 vehicles out of the 36,107 purchased were transferred either to Allenberry or to D.C.P.M. "at cost" and at least 19,100 tons of stores out of the 22,302 purchased.

Now this Rs. 2,46,58,762 was a gross undervaluation. This can be seen in several ways.

We have seen that there were 26,754 unsold vehicles at the date of this transactions. Of these 722 alone were hypothecated to the Bharat Bank on the same date (30-6-48) for Rs. 77,39,000 (Ex. 391/110). The vehicles were 692 five-ton new Dodge trucks at the Calcutta Moran Depot and 30 new G.M.C. Dumps at Calcutta. It is obvious that their market value would be much greater than their hypothecation value.

Then we have the following statements furnished to the Bharat Bank :

31-12-49	Rs. 2,97,88,200 for	.. .. .	13,279 vehicles
			11,465 tons of stores.
			(Ex. 390/264)
31-3-50	Rs. 2,92,41,600 for	.. .. .	12,971 vehicles
			11,356 tons of stores
			(Ex. 390/p. 276)
31-10-51	Rs. 1,64,16,400 for	.. .. .	4,062 vehicles
			10,984 tons of stores
			(Ex. 390)

This reveals only a partial picture because the stocks pledged with the Bharat Bank did not cover the entire stock. Only the stocks at "Calcutta and the Suburbs" were hypothecated (Ex. 453). The following stocks of vehicles at Moran, Lucknow and Pakistan are not included in the figures given above.

Date					Moran	Lucknow	Pakistan
31-12-49	..	..	..		7,398	1,030	1,689
31-12-50	..	..	..		7,256	776	649
			TOTAL	..	10,117 in 1949 and 8,681 in 1960.		

As regards the stores the following were not hypothecated.

									tons
As on 28-2-49:									
Brooklyn	..	..	..	..	..	..	..	..	4,700
Dibrugarh	..	..	..	..	..	..	..	..	1,900
Lucknow	..	..	..	..	..	..	..	..	900
							TOTAL	..	7,500

Then we have a further fact. More than 18 months after this transaction the unsold stocks contained a large number of new unused vehicles. Allenberry received an offer from Brazil on 27-3-50 to buy a number of new vehicles. It replied on 27-3-50 that it would be able to supply the following :

- 400 Dodge trucks
200 Autocars
50 Corbett Movers

Even in February 1957 Allenberry contemplated exporting Rs. 50 lacs worth of Dodge Spare Parts to Hong Kong. (Ex. 414).

This is the documentary evidence. It shows that there were large and valuable unsold stocks with the joint venture on 30-6-48. We also have the evidence of V. H. Dalmia. In answer to a question put by Mr. Ved Vyas on behalf of R. Dalmia, the witness said :

"Within a few days of the spare parts deal we were offered Rs. 1,30,00,000 for the parts."

It will be recollected that these parts weighing 20,000 tons were purchased for Rs. 50 lacs on 11-9-46 (Ex. 94), that is, they were worth 260% of their cost.

There are even more indications of the real value of the unsold stocks. As we have seen, the value "at cost" is said to have been Rs. 2,46,58,742. A part of this stock was sold for Rs. 3,08,49,882 between 30-6-48 (the date of the termination) and 31-12-50, which meant that a large part was sold. Despite this there were further sales amounting to Rs. 2,81,33,867 as under :

	Rs.
1951 sale in a lump to six parties	66,37,600
Further sales	82,67,235
1952 Total sales	40,74,113
1953 Up to October	31,54,919
	<hr/> 2,81,33,867
1954 February to Asia Udyog (D. J. Aviation) in a lump	60,00,000
Add.. .. .	3,08,42,882
	<hr/> 5,89,83,749
Deduct proportionate sales price of the R3-A plant sold to Asia Udyog (D.C.P.M.)	33,58,256
	<hr/>
Balance	5,56,25,493

Sales after October 9, 1953 are not known. But these figures show that stocks valued at Rs. 2,46,58,742 on 30-6-48 were later sold for nearly twice their value, namely Rs. 5,55,95,491. We think that the proper value on 30-6-48 was (at least Rs. 4,24,34,113) was much higher.

Next we come to the Rs. 2,85,66,250, that D. J. Airways had invested in the joint venture. As we have seen the arrangement, *according to Allenberry*, was that Allenberry was to be repaid its half share of the purchase price (out of the sale proceeds) first. That was done by 11-6-48. Therefore, the time had come for repayment of the other partner's contribution. Instead of repaying it the ownership in the stock was transferred to Allenberry and D. J. Airways only got a book debit. Even according to Allenberry's own books this represented 80% of the capital of D. J. Airways, which means that 80% of the capital of the public company was handed over to a private company by a debit balance.

In return, Allenberry agreed to repay D. J. Airways by instalments with interest at 4½%. The instalments were as follows :

Rs. 1 crore on 30-6-49

Rs. 1 crore on 30-6-50

Balance by 30-6-51.

No security or guarantee was either asked for or taken; nor were Allenberry's balance sheets scrutinised to see whether Allenberry was in a position to repay as promised.

It will now be convenient to examine the case that counsel for Shanti Prasad Jain and J. Dalmia sprang on us a surprise one month and five days after the arguments began. They said that the decision to terminate the joint venture agreement was not taken till about February 1949 and that the agreement, Ex. 37, was ante-dated. They said that their clients had resigned as directors long before this, so, not only did they now know anything about the termination but they are not even indirectly responsible as directors.

Mr. Misra made it clear this was not the case that had been set up by their clients. He said that in studying the documents it struck him that Ex. 37 must have been ante-dated; so he was putting this forward as an additional reason to show that his client and J. Dalmia know nothing about the termination.

This case would, of course, involve charges of forgery against J. M. Gupta and Brijmohanlal Raizada who signed Ex. 37. It would also bring in other grave matters that have not been investigated.

When the Commission drew up its statements of matters it saw no reason to put forward a charge of this kind on the material before it. So no accusation of ante-dating and forgery was made in this behalf.

When the written statements came in, not a single written statement, including those of Shanti Prasad Jain and J. Dalmia, even hinted at such a possibility. As a result the issues that were framed did not cover this matter; nor was a single question put to all the many witnesses who were examined to suggest that that had happened.

Now it is evident that before we could reach such a conclusion it would be necessary to have the written statements amended and copies of the

amendments would then have to be sent to those who would be involved in this sudden change of front. New issues would have been necessary; and if anybody wanted to refute these allegations it would have been necessary to allow them to adduce fresh evidence if they so desired.

An amendment to a pleading at such late stage, introducing an entirely new case and involving the consequences that we have indicated, would only be allowed in very exceptional circumstances and for very special reasons. Normally it would be necessary to show discovery of new and important matter that could not have been discovered earlier with the exercise of due diligence and care. No such thing was suggested here. The material on which counsel relied has been before us for the last 4 years and has been available for inspection during all that time; and in fact has been inspected with utmost thoroughness. It would, therefore, not have been possible to allow an application for amendment on what we were told even if one had been made.

However, in order to be sure that we were not doing Shanti Prasad Jain and J. Dalmia an injustice we allowed counsel to argue the point subject to it being disallowed on fuller consideration, especially if others objected. But now that the matter has been fully argued, and as we do not think there is anything in it, we think it will be more satisfactory to deal with the matter on the merits rather than dismiss it on a technical ground.

Mr. Misra based his arguments on five main points :

- (1) on the fact that the entries in Exs. 26/10 and 128/5 are not in chronological sequence;
- (2) that an entry of Rs. 47,439-9-0, being the interest due up to 30-6-48 is entered under that date in Ex. 128 and under date 5-2-49 in Ex. 26/11;
- (3) that in Ex. 26/10 the profits Rs. 9,28,697-14-1 for the year ending 30-6-48 are entered first and the entry of Rs. 2,85,66,250 for the amount of joint venture stock comes after it; whereas, according to counsel they should have been entered the other way round;
- (4) that the auditors report for the year ending 30-6-48 (Ex. 33) is dated 9-3-49, so the profits entered in Ex. 26/10 could not have been ascertained much before that; and
- (5) that the shareholders made no fuss about the termination at a general meeting held on 31-3-49 but created an uproar at a meet-

They are all ledger entries and so could have been entered at any time, and a glance through them shows that there are other entries of the same kind. For example :—

In Ex. 128 there is another entry that is not in chronological sequence; and at page 3 we find the same pattern in the sequence of the entries relating to the profits and the joint venture stock. In fact the sequence followed at page 5 for the year ending 30-6-1948 is the same as the sequence that was employed at page 3 for the previous year ending 30-6-1947.

As regards Ex. 26/10 there are other entries at pages 10 and 11 that are not in chronological sequence.

As regards the differences in the dates in the entries relating to the interest in Exs. 128 and 26/11, that may be due to the dates on which the advices were sent and received, or to an oversight of the clerk who wrote the entries or of the accountant who directed them.

All these points might have been good corroborative evidence if there had been something more concrete to base on. But their significance is swept away by other facts that, in our opinion, are of more vital importance.

If the joint venture was really carried on till February 1949, there must have been a host of officials and workers in the two concerns who would have known; in particular, the General Manager of Allenberry, S. N. Verma. Shanti Prasad Jain also would have known, as he was a director of Allenberry till 4-12-1948. Even if what he says about his having ceased to take interest in these companies after 31-5-1948 is true he would have known after this Commission was appointed, and certainly after we issued our statements of matters. He made the most exhaustive and minute enquiries about everything we said and fell over backwards to "assist us" in the most minute detail about things in which he could hardly have been interested if he had no connection with the current of events after 31-5-1948. So he would certainly have uncovered a fraud of this character if there was anything in what Mr. Misra argued. Not only did nothing come to light but the questions that Mr. Shah put to S. N. Verma and other witnesses were based on the assumption that the termination was on 30-6-1948; so it is evident what his instructions on this point were. The Commission asked Verma,

"When was the decision communicated to you that the joint venture had been terminated?"

He replied,

"Somewhere after July and before December 1948."

Mr. Shah made no attempt to set this right on re-examination. We have already drawn attention to the passage in S. N. Verma's evidence where he told us that Shanti Prasad Jain had not been relieved of his responsibilities as director at the time the joint venture terminated.

As Mr. Misra admitted that he was acting on his own responsibility in raising this matter and not on instructions from his client, and as Mr. K. C. Jain adopted Mr. Misra's arguments about this, we need not go into it any deeper. We hold that the joint venture was terminated on 30-6-1948 and that the termination was not ante-dated.

So far we have examined the position as at the date of the termination and have seen that as matters stood on 30-6-1948, there was no justification for the termination from the point of D. J. Airways. Looked at straight in the face it means that R. Dalmia and Shanti Prasad Jain unashamedly grabbed the money and goods of a public company and handed them over to one of their private concerns for its benefit in exchange for a bare promise from Allenberry which it did not keep.

We will now turn to the position of Allenberry *after* the transaction and see the profits that it made from the disposal stocks that it took over, profits in which the joint venture would have shared had the partnership continued.

The balance sheets of Allenberry do not disclose a profit but that is because they were manipulated. We will examine that in detail when we deal with Allenberry's manipulations. If these balance sheets had been written up properly they would have disclosed profits as below from 30-6-1948 to 31-12-1950 *before* adjustments for indirect expenses :

							Rs.
Half year ending	..	..	..	..	..	31-12-1948	17,26,108
Year ending	..	..	..	..	..	31-12-1949	30,57,824
Year ending	..	..	..	..	..	31-12-1950	26,85,809

Now had the joint venture continued, no adjustment for indirect expenses would have been warranted. All that Allenberry could have charged would have the reconditioning charges and the sales commission stipulated in the joint venture agreement, Ex. 36.

The figures that we have given about the sales commissions charged are higher than in the joint venture period. We find from a computation that during the joint venture period the commission charged came to about 2.4% on the gross sales. We think it would be fair to allow 2.5%. When that is done the profits that we have given above will be slightly lower. After adjustment the adjusted profits will work out as below :

Period	Profits as above	Commission actually charged	Commission chargeable at 2.5 %	Adjusted profits
	Rs.	Rs.	Rs.	Rs.
31-12-48	17,26,108	1,34,216	1,87,620	16,72,704
31-12-49	30,57,824	1,86,838	3,32,372	29,12,290
31-12-50	26,85,809	56,411	2,91,936	24,50,284
			TOTAL	70,35,278

These profits would have been earned by the joint venture had it continued.

Now, we said that it was bad enough not to insist on D. J. Airways having independent advice in this matter; but there was in fact a direct breach of the law in this respect. The legal formalities that the Indian Companies Act, 1913, required were not observed.

Clause 166 of the Articles of Association of D. J. Airways (Ex. 85) requires that

- (1) A Director must disclose *at the meeting* the nature of his interest; and
- (2) If he has an interest, he must not vote, and if he votes his vote shall not be counted.

This is the exact wording of Sections 91A and 91B of the Indian Companies Act of 1913.

Shanti Prasad Jain was interested in Allenberry and was also interested as a director of D. J. Airways; so he could not vote.

J. M. Gupta and R. K. Jain must also be eliminated because they were "indirectly concerned" with the deal and were "indirectly interested" in it. That brought Section 91B of the Indian Companies Act into play and disqualified them.

J. M. Gupta was indirectly "concerned" and "interested" because he was a dummy who signed and acted according to the directions of R. Dalmia and Shanti Prasad Jain who were interested in the transaction.

R. K. Jain was also indirectly "concerned" and "interested" because he was another dummy director and an employee of the Bharat Bank, a D. J. Group, concern. So he would have acted according to the interests of the D. J. Group who were interested.

If these three persons are removed the only director left is J. Dalmia and, apart from the fact that he is indirectly interested as a member of the D. J. Group, Clause 149 of the Articles of Association (Ex. 85) requires a quorum of two, and Section 91B of the Indian Companies Act says that the presence of an interested director shall not be counted for the purpose of forming a quorum. Therefore, there was no valid meeting.

We are not being hypertechnical. The purpose of these provisions is to ensure that the company has an entirely independent vote: see Aiyer's Digest of Company Cases, page 235 and 1936: 6 Co. Cases 90. It is another way of saying that the law requires an independent and disinterested vote just as much as it insists on independent and disinterested advice in the case of *pardanashin* ladies, minors and those under a disability. It is not something special or technical to company law but is a golden thread of common sense and fair play that runs through the whole fabric of the law.

It is to be observed that the whole thing was such a hole and corner affair that even the Director's Report (Ex. 33) given on 9-3-1949 says nothing about such an important matter. The transaction is not mentioned there though it took place on 30-6-1948 and left D. J. Airways with only the losing part of the total business.

(VIVIAN BOSE) (V. R. SEN) (N. R. MODY) (S. C. CHAUDHURI)

VOLUME IV

DALMIA JAIN AVIATION

POST-JOINT VENTURE: ALLENBERRY

LIQUIDATION OF D. J. AIRWAYS



PART 1

POST-JOINT VENTURE : ALLENBERRY
LIQUIDATION OF D. J. AIRWAYS



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CHAPTER I

D. J. AVIATION

A. Formation

D. J. Aviation was floated supposedly for the purpose of taking over the aviation business of D. J. Airways, but, as in the case of D. J. Airways, that was only a blind and the pattern was very much as before.

The real promoter was R. Dalmia. He guided the policy regarding the promotion. But, as in the case of D. J. Airways, he remained in the background and put forward a set of dummies who purported to be the promoters though they had no financial stake in the concern.

The persons who signed the Memorandum of Association (Ex. 132) were

M. P. Modi
V. H. Dalmia
Shadi Lal Saluja
L. N. Pathak
J. M. Gupta
S. L. Verma
Kailash Chandra

The last also signed the memorandum of association of D. J. Airways as subscribers. We have already dealt with them in that connection and need not repeat what we have said there. We have also dealt with V. H. Dalmia when examining the control of Allenberry. At that time he was only 21 years old. On 11-3-48 he was three years older; but in any case, he ceased to be a director on 1-8-48, that is, before the company started functioning—and he never attended a single board meeting.

Of the others, M. P. Modi is a son of R. Dalmia's sister and is an employee of the D. J. Group. He also ceased to be a director before the company started functioning, that is, he was a director only up to 21-8-48. He attended only one preliminary meeting of the Board.

Shadilal and Pathak are both employees of R. Dalmia and his companies. All these persons, except V. H. Dalmia are men of small means who would never have been able to take on the job of floating a company for Rs. 2 crores on their own.

J. M. Gupta, one of the directors was questioned closely about what the directors did and in the end he said.

"Witness is asked whether the Board of Directors acted on the directions of M. R. Jain and S. L. Verma or whether they exercised an independent discretion. He answers that the main man was R. Dalmia and that these two persons were working under his directions. It follows that the Board of Directors took their instructions from R. Dalmia as communicated through M. R. Jain and S. L. Verma."

We also find the same kind of misrepresentation made to the Controller of Capital Issues as was found in the case of D. J. Airways. J. M. Gupta was again chosen to make the application (Ex. 133). It will be remembered that he had also signed the previous application (Ex. 80) relating to D. J. Airways. In the present application he said that

"the formation of this company is being carried out in deference to the instructions of the Air Transport Licensing Board, Government of India, New Delhi, who want us to reconstitute the present set up of the Dalmia Jain Airways Limited by floating this separate company *exclusively for taking over its Air Section.*"

The letter is dated 13-10-47.

The application proposed that the name of the new company should be Dalmia Jain Air Ltd. The Registrar of Joint Stock Companies objected to this and said that the name should be changed. So J. M. Gupta again wrote to the Examiner of Capital Issues on 13-12-48 (Ex. 134) and asked that the date of the sanction should be extended to 28-2-49.

In this interval a very important change had taken place, namely the joint venture business was terminated on 11-6-48 as from 30-6-48 and so *the only business left for D. J. Airways was its air business.* It is obvious that there was no need for a fresh company to do air business exclusively if that was all that D. J. Airways was doing at this date. J. M. Gupta was asked to explain this and he said that he was not able to give any explanation.

We next find that the statements that the company was being floated to do air business and that a capital of Rs. 1 crore was wanted for the purpose were blatantly untrue. In the case of D. J. Airways there was at least some pretence of doing air business; but in this case there was not even that. From start to finish it did no air business, and when P. S. Patke was asked whether "any part of the money of D. J. Aviation was used for the purposes set out in the application Ex. 133A", he said

"I agree that no part of the money was used for those purposes. This was because we could not do so though we wanted to."

Now they had the experience of D. J. Airways before them. Their first and only temporary licence issued for D. J. Airways had expired by then and they made no attempt to get a fresh one—not even a fresh temporary licence.

Mr. Ved Vyas was at pains to underline, in his cross-examination of G. Ramachandran, a point that the witness had already made namely, that except for two persons whom the liquidator had appointed, the *same staff* was taken over by D. J. Aviation; and that is exactly what we want to draw attention to here. There was no change in the situation, and no change was intended; there was no infusion of fresh blood. Now we have seen at an earlier stage that the entire amount paid for the administrative salaries for the Air section of the D. J. Airways business was

Rs. 1567-12-0 up to 31-7-49 Ex. 45

Rs. 1300-0-0 up to 31-7-50 Ex. 46

Rs. 1200-0-0 up to 31-7-51 Ex. 47

It is evident that no airways business can be run on those lines and we know that it came to a standstill in the hands of D. J. Airways. Therefore, when the same staff was taken over it is clear that there was no more intention to run an airways business after the transfer than there had been before. It follows that the representations made to the Controller of Capital Issues that the new company was being formed to run an airways business and that it would require Rs. 1 crore of capital was false and knowingly false.

B. Share Capital

We will now turn our attention to the share capital of Rs. 1 crore and see how it was made up.

The initial subscription to the share capital, amounting to Rs. 1 crore, was made up of 75 lacs ordinary shares of Rs. 10 each and 25,000 preference shares of Rs. 100 each. The capital was raised as follows :

- (a) D. J. Airways subscribed to 750,000 ordinary shares and 250 preference shares : total Rs. 75,25,000; and
- (b) Bharat Insurance subscribed to 24,750 preference shares : total Rs. 24,75,000.

At that time D. J. Airways was a public limited company in which the investing public held more than 85 per cent of the shares; while in Bharat Insurance its *shareholders* and policy holders had a substantial stake.

But though this was the supposed state of affairs the facts are misleading because the Rs. 1 crore was not subscribed in cash. Only Rs. 10,000 was received in cash. (Ex. 136) and the balance represented the indebtedness of D.C.P.M. We have dealt with this when examining the inter-company investments of D. J. Airways and we will show later at the date of the allotment D. J. Airways was already indebted to D. J. Aviation to the extent of Rs. 90,000 and that therefore the allotment meant that D. J. Aviation was giving financial assistance to D. J. Airways to enable it to subscribe for D. J. Aviation shares. This contravenes sections 54A(ii) and 77B and C of the Indian Companies Act, 1913.

In the case of Bharat Insurance also nothing was paid in cash. The Rs. 24,75,000 was simply debited to the account of D.C.P.M. in the books of D. J. Aviation on the strength of credit advices (See Exs. 42 and 39). Therefore, here again D. J. Aviation gave Bharat Insurance financial assistance to the extent of Rs. 24,75,000 to enable Bharat Insurance to buy 24,750 preference shares of D. J. Aviation.

It follows that the statement in the statutory report, Ex. 38, that Rs. 1 crore was raised "in cash" for the shares allotted up to 10-6-49 was false.

The auditor, Sodhbans (W. 2) said that in his opinion "cash received" is the same as "money owing" and that therefore he was justified in certifying in Ex. 38 that the Rs. 1 crore had been received in cash. We are clear that that is not so, and in our opinion the statement constitutes a second misrepresentation to the Controller of Capital Issues, namely that the issue was all for cash. This was also a misrepresentation to the shareholders.

The facts set out above were also misleading on another score. Though D. J. Airways was the beneficial owner of Rs. 75,25,000 worth of shares, they were never entered as shareholders in the register of shareholders. Instead, their shares were held benami by a number of persons, all of whom were either relatives or employees of the D. J. Group or its concerns. M. P. Modi, V. H. Dalmia, Kailash Chandra, Shadi Lal Saluja, L. N. Pathak and Hari Ram Goyal each held 5 ordinary shares, while P. S. Patke and M. L. Sodhani each held 25 shares and M. R. Jain held 110. But the biggest holders were the following :

J. M. Gupta	..	..	..	..	..	100,505 ordinary and 25 preference
S. L. Verma	..	..	..	..	..	100,405 ordinary and 25 preference:
Shital Prasad Jain	..	..	..	..	..	242,900 ordinary and 25 preference:
and the three Raizadas each held	..	..	..	..	..	102,000 ordinary and 50 preference:

Of these persons we examined J. M. Gupta and Brijmohanlal Raizada. The latter said that he did not own any of these shares and did not even know or ask whose benamidar he was though he presumed that he was a nominee of R. Dalmia. He said that he signed the application forms, Exs. 57/5 and 67 and the transfer deeds, on being told that,

“you have not to pay any money; you have only to sign.”

He said that his brothers did the same.

J. M. Gupta also told us that the shares were not his property and that he was a nominee of D. J. Airways. He said that he thought he signed blank transfer deeds along with the share applications and that so far as he was concerned this was routine.

The way in which the allotments were made is described by J. M. Gupta. He was a promoter and one of the first directors. He was asked whether it was necessary to allot Rs. 1 crore worth of shares to the persons we have named above. His answer was,

“I did not give any thought to the matter, as two persons, namely, M. R. Jain and S. L. Verma were handling the work. They were taking instructions straight from R. Dalmia, and because they put the matter before me, I agreed to this allotment, including the allotment of Rs. 10,07,550 worth of shares to myself.”

As the total administrative salary of the entire D. J. Aviation staff up to 31-7-49 was only Rs. 1,567-12-0 (Ex. 45) it is hardly likely that these two persons were paid by D. J. Aviation.

J. M. Gupta also told us that,

“the main man was R. Dalmia and these two persons” (M. R. Jain and S. L. Verma) “were working under his instructions. It follows that the Board of Directors took their instructions from R. Dalmia as communicated through M. R. Jain or S. L. Verma.”

It will be seen therefore that there were certain initial illegalities and irregularities as in the case of D. J. Airways. First, the promoters were not honest with the Controller of Capital Issues. They told him that D. J. Aviation was being formed for taking over the air business of D. J. Airways when that was not true. They also told him that the aviation

assets of D. J. Airways would be taken over by D. J. Aviation against payment in cash (Ex. 133A). That also, was not true because the assets were not taken over by D. J. Aviation and the main assets were later handed over to D.C.P.M. "at cost".

They also said that the shares were allotted against Rs. 1 crore "cash received" which again was not correct. These representations and the methods of allotment infringed Sections 54A(ii) and 77(3) (b) and (c) of the Indian Companies Act, 1913.

The object of these untrue representations was—

- (1) to avoid disclosure of the true position, namely, that Rs. 1 crore worth of shares had been allotted to nominees of D. J. Airways and Bharat Insurance *without receiving the bulk of the share application money (Rs. 99 lacs) in cash*; and
- (2) to give indirect financial assistance to D.C.P.M. in respect of the Rs. 99,87,963-15-6 that it owed D. J. Airways and Bharat Insurance at that date.

The misrepresentations were made by J. M. Gupta at the instance of R. Dalmia.

We will now examine the effect of these transactions and see how they were brought about. We will first turn our attention to D. J. Airways. What happened there was this.

First Rs. 75,15,000 was debited to D. J. Airways in the books of D. J. Aviation (Exs. 40 and 41).

Then, out of that sum Rs. 75,12,963-15-6 was transferred to the account of D.C.P.M. in the same books.

As regards Bharat Insurance, another Rs. 24,75,000 was debited to the D.C.P.M. account.

Thus the total amount debited to the D.C.P.M. account was Rs. 99,87,963-15-6.

So the picture at this stage was that D.C.P.M. owed D. J. Aviation Rs. 99,87,963-15-6 and the capital of D. J. Aviation was shown as fully paid up to the extent of Rs. 1 crore.

This means that D.C.P.M. received financial assistance from D. J. Aviation to the extent of Rs. 99,87,963-15-6. As against this the shareholders of D. J. Airways never received any dividend on the ordinary shares of D. J. Aviation held by it; and the loss of dividend to the shareholders of D. J. Airways was an indirect loss to the investing public.

So much for the happenings up to the date of the formation of D. J. Aviation. We will now see what happened after that.

C. Inter-Company Loans and Advances

One was that R. Dalmia utilised this company for the purpose of furthering his scheme of using the institution of corporate existence to manipulate inter-company loans and advances. Instead of conducting the business, for which alone sanction was obtained from the Controller of

Capital Issues, the company was utilised for the purposes just set out. This is to be gathered from the following facts.

- (1) On 28-2-49 D.C.P.M. was indebted to D. J. Airways to the extent of Rs. 60,21,452 and to Bharat Insurance to the extent of Rs. 33,33,407. Both these sums were repayable on demand and both carried interest; also the investing public had a substantial stake in D. J. Airways and the policy holders in Bharat Insurance.
- (2) D. J. Airways subscribed to the shares of D. J. Aviation to the extent of Rs. 72.25 lacs and Bharat Insurance to the extent of Rs. 24.75 lacs. Between them these two companies held the entire paid up capital of D. J. Aviation. Now both these companies were then controlled by R. Dalmia, which meant that R. Dalmia also controlled D. J. Aviation.
- (3) To meet the liabilities incurred by subscribing to the shares of D. J. Aviation as above both D. J. Airways and Bharat Insurance drew hundies on D.C.P.M. in favour of D. J. Aviation. But D. J. Aviation did not realise these hundies in cash. Instead of that, D. J. Aviation debited the account of D.C.P.M. in its books with the amount of the hundies, namely, Rs. 99,87,963-15-6 and took no security for the debt.

The over-all effect of these manoeuvres was this. In the books of D. J. Airways and Bharat Insurance, the indebtedness of D.C.P.M. to them was wiped out and was substituted by the shares of D. J. Aviation, a company that had no assets against its supposedly paid up capital of Rs. 1 crore, except the unsecured indebtedness of D.C.P.M., Rs. 99,93,963-15-6, and the cash and bank balance of Rs. 3,554-12-0.

Now instead of using the subscribed capital for air business, almost the whole of it was either debited to D.C.P.M. or was invested in the shares of sister companies in which the D. J. Group was substantially interested. This will be seen at a glance from the following table :—

Date	Deposit with DCPM	Investments	Total	Ex. No.
	Rs.			
31-7-49	99,93,963-15-6	—	99,93,963-15-6	45
31-7-50	16,05,310- 1-3	86,00,000	1,02,05,310- 1-3	46
31-7-51	44,51,668- 5-9	56,42,578	1,00,94,246- 5-9	47
31-7-52	—	98,70,000	98,70,000- 0-0	218

The extent of the investments as on 31-7-50, 31-7-51 and 31-7-52 and the companies in whose shares the investments were made are shown below :—

Company	31-7-50	31-7-51	31-7-52
D.C.P.M.	2,00,000	11,50,000	—
Jaipur Udyog	70,00,000	40,00,000	40,00,000
Allen Motors	25,000	25,000	—
LESCO	11,92,022	—	26,00,000
Gwalior Bank	1,82,978	42,978	—
Edward Keventers	—	1,12,500	—
Delhi Glass Works	—	6,100	—
Oxygen Acetylene	—	6,000	—
Bennett Coleman	—	—	6,00,000
	86,00,000	56,42,578	98,70,000

Not one of these shares, purchased by D. J. Aviation, were held by it in its own name, and not a single dividend was received on any of them during these three years, except Rs. 55,017 from LESCO.

Nor can these shares be classified as good and sound investments from any normal business point of view. The only object of floating D. J. Aviation was to enable R. Dalmia to make advances to D.C.P.M. and to buy and sell shares in sister concerns for his ultimate benefit. This will be apparent from the following analysis of the buying and selling of shares by D. J. Aviation, the *only* business that this company conducted apart from lending money to D.C.P.M. We give below a table showing the value of the investments held by D. J. Aviation at the end of each of its financial years :—

Date	Amount Rs.	Percentage to the paid up capital	Ex. No.
31-7-50	86,00,000	86	46
31-7-51	56,42,578	56	47
31-7-52	98,70,000	98.7	218, 219, 784 & 785
31-7-53	1,86,64,464	186.7	220, 231
31-7-54	1,22,25,397	122.3	443, 471 & 472
31-7-55	1,24,28,223	124.3	789
31-7-56	1,56,65,114	156.7	473, 474 & 475

The next table shows the value of the total purchases and sales of shares in each of the financial years and the value of the shares held at the close of each financial year :—

Year ending	Opening Balance	Purchases	Sales	Closing Balance	Ex. No.
31-7-50	Nil.	86,00,000	—	86,00,000	46
31-7-51	86,00,000	17,98,000	47,47,022	56,42,578	47
31-7-52	56,42,578	1,15,25,391	72,98,969	98,70,000	218
31-7-53	98,70,000	1,16,85,364	28,91,030	1,86,64,464	230, 231
31-7-54	1,86,64,464	14,03,519	88,07,390	1,22,25,397	443, 471, 472
31-7-55	1,22,25,397	58,92,645	41,89,819	1,24,28,223	789
31-7-56	1,24,28,223	1,98,86,348	1,63,40,132	1,56,65,114	473, 474, 475

In the year ending 31-7-55 D. J. Aviation suffered a loss of Rs. 15 lacs on the sale of fifteen A-Class shares of Bennett Coleman to Bharat Union Agencis; and in the next year ending 31-7-56 it lost Rs. 3,00,333 on the sale of shares in Dalmia Dadri Cement, Bennett Coleman, Allenberry and Indian National Airways.

Another point to note is that on 30-11-55 D. J. Aviation sold 239,882 shares when it held only 209,882. The value of the excess of 30,000 shares was Rs. 35,937-8-0.

We will now look at this from another angle. The investments were made in 23 companies all controlled by R. Dalmia, but the bulk of the

investments were in 13 private limited companies. The ratio of investment in public limited companies compared with those in these 13 private limited companies is given below :—

Year ending		Investment in public companies	% age of total investment	Investment in private companies	% age of investment	Total
31-7-50	.. ..	15,75,000	18	70,25,000	82	86,00,000
31-7-51	.. ..	12,05,078	21	44,37,500	79	56,42,578
31-7-52	.. ..	26,00,000	26	72,70,000	74	98,70,000
31-7-53	.. ..	95,24,434	51	91,40,030	49	1,86,64,464

Now the payments for the purchase and receipts of the sale proceeds in most of these cases were credited and debited respectively to the account of D.C.P.M. up to 1953 and thereafter to other companies such as South Asia Industries and Bharat Union Agencies.

None of these companies was registered with the Stock Exchange except LESCO, Rohtas Industries and Bharat Insurance. There were consequently no market quotations for their shares; but we find that the same type of shares was purchased at varying rates at short intervals. Here are some examples taken from the list set out in our statement of matters relating to Dalmia Jain Aviation.

1. *Patiala Biscuit, Ordinary*

27-2-1954	70,005 shares bought at	..	..	..	..	..	..	-1/-
30-9-1954	20,000	..	..	..	..	..	..	-4/-
31-12-1954	72,842	..	..	..	..	..	..	-2/-
14-2-1955	35	..	..	..	..	..	..	-4/-
30-9-1955	47,000	..	..	..	..	..	..	2/-

2. *L.E.S. Co.*

(1) A Class Ordinary

20-4-1950	7,119 shares bought at	130
30-4-1952	14,129	..	..	..	..	..	200
17-2-1953							
30-11-1955	10,000	..	..	..	..	..	250

(2) B Class Ordinary

11-2-1955	500 shares bought at	..	..	..	..	..	20
30-11-1955	198,630	..	..	..	..	..	25

(3) B Class Preference

30-11-1955	49,990 shares bought at	25
31-7-1956	12,000	..	..	..	..	..	12

3. *Dalmia Dadri Cement*

(1) Ordinary

On 17-2-1953 at	..	..	..	..	..	..	7
between 16-9-1954 and 25-11-1954	..	..	..	..	..	..	8/1/8 to 8
7-12-1954	..	..	..	..	..	..	6/8/0
23-1-1955 and 26-3-1955	..	..	..	..	..	..	8/1/7 to 8/1/-
30-9-1955	..	..	..	..	..	..	10/-
19-4-1956	..	..	..	..	..	..	14/-
30-4-1956	..	..	..	..	..	..	7/4/-
15-5-1956	..	..	..	..	..	..	10/-
20-7-1956	..	..	..	..	..	..	15/-
31-7-1956	..	..	..	..	..	..	10/- and 20/-

(2) Preference

17-2-1953	..	..	..	..	..	..	..	..	70
16-9-1953 to 28-10-1954	..	..	..	..	..	..	..	..	81
25-11-1954	..	..	..	..	..	..	..	..	80
7-12-1954	..	..	..	..	..	..	..	..	106
30-12-1954	..	..	..	..	..	..	..	..	60
7-1-1955	..	..	..	..	..	..	..	..	81
12-9-1955	..	..	..	..	..	..	..	..	58/5/4
30-9-1955	..	..	..	..	..	..	..	..	100
19-4-1956	..	..	..	..	..	..	..	..	130
5-5-1956	..	..	..	..	..	..	..	..	100
30-6-1956	..	..	..	..	..	..	..	..	73
31-7-1956	..	..	..	..	..	..	..	..	100

But what is even more significant is that a block of shares would be bought on one date and then re-sold *for exactly the same price* after a short interval. In the cases that we list below the interval varied from 14 days to 10 months :—

Company	Shares Rs.	Purchased	Sold	Period held months' days
Govan Bros.	1,200,000 (Ord.) 1,635,000 (Pref.)	30-10-1951	30-4-52	6—0 6—0
Lazarus & Co.	175,000 (Ord.) 287,000 (Pref.)	14-11-1951	16-4-52	5—0 5—0
Rohtas Industries ..	33,750 (Ord.) 111,000 (Pref.)	23-2-1952 30-3-1952	30-3-52 1-4-52	1—6 0—18
National Bank, Lahore ..	50,516 (Ord.) 56,188 (Pref.)	24-3-1952 16-4-1952	30-4-52	1—6 0—14
D.C.P.M.	125,000 (Pref.)	30-9-1950	28-2-51	5—0
Jaipur Udyog	1,750,000 (Ord.)	31-10-1951	31-1-52	3—0
LESCO.	925,470 (A) 266,552 (B)	29-4-1950	28-2-51	10—0
Rajputana Investment ..	90,000 (Ord.) 300,000 (Pref.) 50,000 (Defd.)	30-9-1950 14-11-1951	28-2-51 31-1-52	5—0 2—16 2—16
Temaxco	7,500	30-9-1951	26-11-51	1—26

It is clear from the above that these were not ordinary business investments. D. J. Aviation made neither gain nor loss.

One of the objects of these transactions was to window-dress the balance sheets of these companies. We will select D.C.P.M. as an illustrative case. To understand this it must be borne in mind that the accounting year of D. J. Aviation ended on the 31st July and that of D.C.P.M. on the 28th of February.

In the case of D.C.P.M. we find that the following transfers were made by D. J. Aviation to D.C.P.M. on 28-2-1951, *the last day of the accounting year of D.C.P.M.* In each case the transfer was for exactly the same price

that D. J. Aviation had paid for the shares when purchasing them; and in three cases the shares had been purchased from D.C.P.M. itself :—

Company	Amount Rs.	Purchased from	On (Date)
LESCO A Class	9,25,470	D.C.P.M.	29-4-1950
B Class	2,66,552		
Gwalior Bank	1,40,000		
D.C.P.M. (Deferred)	1,25,000	Govan Bros.	30-9-1950
Rajputana Investment	90,000		
D.C.P.M. (Ordinary)	2,00,000	R. Dalmia	11-8-1949
TOTAL ..	17,47,022		

In the next accounting year of D.C.P.M., namely the year ending 29-2-1952, the transfers were not effected quite as crudely, that is to say, they were not effected on the last day of the accounting year but were spread over the year. But the same characteristics prevailed, namely, that the shares were transferred to D.C.P.M. *for exactly the same price for which they had been bought*; also, in many cases, as in the ones we have just examined, *the vendor was D.C.P.M.* We list the instances below :—

Company	Amount Rs.	Purchased from	On (Date)
Gwalior Bank	42,978	D.C.P.M.	29-4-1950
Jaipur Udyog (Ord.)	17,50,000		31-10-1951
Temaxco	7,500	R. Dalmia	30-9-1951
Rajputana Investment : (Ord.)	3,00,000		14-11-1951
(Defd.)	50,000		
Allen Motors	25,000	Allenberry	31-3-1950
Oxy. Acetylene (Ord.)	6,000	Govan Bros.	30-9-1950
TOTAL ..	Rs. 21,81,478		

The same pattern was followed in D.C.P.M.'s year ending 28-2-1953. The instances are :—

Company	Amount Rs.	Purchased from	On (Date)
Govan Bros. (Ord.)	12,00,000	D.C.M.P.	31-10-1958
(Pref.)	16,35,000		
C. Lazarus (Ord.)	1,75,000		14-11-1951
(Pref.)	2,87,433		
Ed. Keventer	1,12,500	Govan Bros.	30-9-1950
Bennett Coleman	28,91,400	Jaipur Traders.	14-11-1951
Rohtas Industries	33,750		23-3-1952
(B. Pref.)	1,11,000	R. Dalmia	13-3-1952
TOTAL ..	Rs. 64,46,083		

These figures show that in these three years Rs. 1,03,74,583 worth of shares that had been purchased by D. J. Aviation were transferred to D.C.P.M. *at post price*, and of this no less than Rs. 64,22,433 consisted of shares that were purchased from D.C.P.M. itself and then sold back to it *for the same price*, after holding them for a short interval. It is obvious that these were

not normal business transactions and that the object was to assist, in this case, D.C.P.M.

So much for the transfers to D.C.P.M. We do not intend to set out the rest at length; but in addition to the Rs. 1,03,74,583 worth of shares transferred to D.C.P.M. a further Rs. 73,43,000 worth were similarly dealt with between 31-8-1950 and 5-7-1954, the transferees being Rashtrya Agencies, Bharat Union Agencies, Edward Keventers and the Punjab National Bank.

Now, an airways company with a paid up capital of Rs. 1 crore does not buy Rs. 1,77,17,583 worth of shares in the course of 4 years only to re-sell them at the same price, and do this, not once or twice, but keep on doing it. There can, therefore, be no doubt that the investments of D. J. Aviation were used for improper purposes. Apart from the facts set out above, which speak for themselves, there is the additional factor that all this extensive buying and selling of shares was done without the knowledge and prior sanction of the directors. P. S. Patke (W. 7) told us that the directors knew about these dealings only when the final accounts (that is, the balance sheet and profit and loss accounts) were placed before them for approval. They were not told the position of the company even at the end of each financial year.

We think it is legitimate to infer that the object of these manoeuvres was,

- (1) to represent in the balance sheets of D. J. Aviation as on 31-7-1950 and 31-7-1956 that the company held valuable investment; and
- (2) to reduce on paper the indebtedness of D.C.P.M. which stood at Rs. 99,87,963-15-6 in Ex. 38 and at Rs. 99,93,963-15-6 in Ex. 45; also
- (3) to reduce the burden of the interest liability of D.C.P.M. even though the interest was as low as 3%.

Touching this matter of interest, the position was this; during the years 1948—57 the Bharat Bank used to charge 4½ to 6% interest on the loans given to its clients, depending on the amount and duration of the loan, the nature of the security and the reputation of the party. D.C.P.M. therefore could not have obtained an *unsecured* loan of nearly Rs. 1 crore at less than 6% interest. But by getting the Rs. 99,93,963 from D. J. Aviation from 7-2-1949 to 31-7-1952 at only 3% D.C.P.M. was benefited to the extent of 3%, that is, to the extent of Rs. 10,49,370.

The interest liability was reduced still further by transferring unremunerative shares of large amounts to D. J. Aviation by way of interest at Rs. 15,86,343.

That figure is reached as follows :

	Rs.
Interest 6% or Rs. 99,93,963, the amount due from D.C.P.M. from 7-2-1949 to 31-7-1952 i.e. for 3½ years	20,98,740
Less Actual income to D. J. Aviation during that period by way	
of Interest	Rs. 4,57,350
dividend	Rs. 55,017
	<hr/>
	5,12,397
Net loss of interest to D. J. Aviation	<hr/> 15,86,343

In our opinion D. J. Aviation was fraudulently floated for the improper purposes that we have analysed above, and after floatation the fraudulent purposes were carried into effect in the way just described.

The persons primarily responsible are the directors, namely, M. L. Sodhani, G. Ramachandran, P. S. Patke, Manmohanlal Raizada, R. Sharma and S. K. Sanghi. But these persons were mere dummies and the shares were in reality bought and sold at the instance of R. Dalmia. He is the person really responsible.

The auditor, P. S. Sodhbans, was also an accessory in that he wilfully certified the Statutory Reports and Balance Sheets, Exs. 38, 45, 46, 47 and 218, under the Indian Companies Act, 1913, knowing them to be false.

We will now examine in detail the part that the auditor played in this and other Dalmia concerns.

D. The Auditor : P. S. Sodhbans

Messrs. Sodhbans & Co., whose sole proprietor is P. S. Sodhbans, were the Statutory Auditors of the following companies mentioned in the notification S.R.O. 2993 of 11th December, 1956;

Dalmia Jain Aviation Ltd.,

Dalmia Jain Airways Ltd.,

Lahore Electric Supply Co. Ltd.

(known as Asia Udyog Ltd.)

For the sake of convenience, we will refer to Sodhbans & Company as "Sodhbans". We will deal with each company separately.

Dalmia Jain Aviation Ltd.

(2) This company was incorporated on 11th March, 1948 with a capital of Rs. 1 crore. Its Statutory meeting was held on 9th July, 1949, and the Statutory Report (Ex. 38) under item 1 thereof shows "Shares allotted up to 10th June, 1949 and cash received up to the aforesaid date" as follows :—

	Number of Shares	Nominal value of each share	Cash received
		Rs.	Rs.
"(a) Allotted subject to payment therefor in cash			
Preference	25,000	100 each	25,00,000"
Ordinary	75,000	10 each	75,00,000

It may thus be noted that there was a categorical statement that cash had been received to the extent of Rs. 1,00,00,000. In item 2 of the Statutory Report dealing with "the receipts and payments of the Company up to the aforesaid date" it is shown that Rs. 25,00,000 have been received for the Preference Shares and Rs. 75,00,000 for the Ordinary shares.

(3) The Statutory Report has been certified by P. S. Patke (the personal Secretary to R. Dalmia) and by M. L. Sodhani, as Directors. Sodhbans

certified the Statutory Report as correct in accordance with Section 77(4) of the Indian Companies Act, 1913, in so far as the Report related to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company.

(4) The said Statutory Report was false and so was Sodhbans' certificate. Reasons are as follows :—

- (i) At a Board meeting held on 21st December, 1948, 7,500 Ordinary shares (Re. 1 paid up) and 250 Preference shares (Rs. 10 paid up) were allotted to certain benami persons, acting for D. J. Airways, as per the list placed before the meeting (Ex. 56/4). A sum of Rs. 10,000 was paid in cash by debit to Bharat Bank Ltd., as per voucher (Ex. 136). The balance of Rs. 90,000 was debited to D. J. Airways (D.J.A.) as per voucher Ex. 41, dated 5th February, 1949.
- (ii) On 7th February, 1949, shares of the value of Rs. 74,25,000 were allotted to the nominees of D. J. Airways as set out in Ex. 56/5. This amount was not received in cash, but instead an entry was passed debiting D. J. Airways (Ex. 40).
- (iii) Thus, by virtue of the above allotments, D. J. Airways was indebted for Rs. 75,15,000 (Rs. 74,25,000 plus Rs. 90,000 as above) and after crediting D.J.A. with Rs. 2,036-0-6 on 31st May, 1949, for preliminary expenses incurred by it on account of D. J. Aviation, the amount due from D. J. Airways was Rs. 75,12,963-15-6. On 31st May, 1949, D. J. Airways drew a hundi on D.C.P.M. in favour of D. J. Aviation and D.C.P.M. therefore became indebted to D. J. Aviation for the amount.
- (iv) On 7th February, 1949, 24,750 shares were allotted to the Bharat Insurance Co. Ltd., but this amount was not received in cash. Instead, D.C.P.M. sent a credit advice and the amount of the allotment was debited to D.C.P.M.
- (v) Thus, D.C.P.M. became indebted to D. J. Aviation for Rs. 99,87,963-15-6 as at the date of the Statutory Report as under :—

	Rs.
(a) For allotment to nominees of D. J. Airways	75,12,963 15 6 (iii above)
(b) For allotment to nominees of Bharat Insurance	24,75,000 0 0 (iv above)
	<hr/> 99,87,963 15 6 <hr/>

and this amount has been shown in the Receipts and Payments account of the Statutory Report as "Deposits".

- (vi) In his written statement of 14th July, 1960 Sodhbans, beyond admitting that he audited the Statutory Report, raised the smoke screen of 'limitation', pleading that he was under no obligation to explain the audit done by him over eight years ago. He then said that the matter had already been explained by him in the witness box.

(vii) We will, therefore, seek enlightenment from his statements as a witness (W. 2). In the course of his examination, he made the following statements :—

(a) When shown the Statutory Report (Ex. 38) he said :

“I recognise my signature there. The receipts of the Company are shown as 25 lakhs of shares (Preference) and 75 lakhs (Ordinary). This was in accordance with the shares allotted up to 10-6-1949 and cash received up to the aforesaid date. I say after all my years of practice that a statement ‘cash received’ is the same as money owing because it is owing as money in the Bank is owing. I made no distinction between parties from whom the money is owing. They may be weak or strong, big or small.”

(b) When shown the figure of Rs. 99,87,963-15-6 described as “deposits” in the Receipts and Payments section of the Statutory Report, Sodhbans said—

“the word ‘deposits’ means that the company has the cash and has made the deposit with somebody else. Therefore, my Statutory Report means that out of the one crore of rupees *received* by the company in *cash* a sum of Rs. 99 lakhs and Rs. 87,000 odd was deposited with someone else. I would be surprised if the cash of a crore was not received by the company and if the Rs. 99 lakhs odd were not deposited out of it with someone else.”

(c) When the witness was confronted with Exs. 39, 40 and 41 dated 1-2-1949, 5-2-1949 and 5-2-1949 respectively and Exs. 42, 43 and 44, he admitted that they bore his audit ticks, but tried to maintain that even after looking at them, Statutory Report was correct. He said :—

“These vouchers show the deposits made by D. J. Aviation in *cash* and deposited with D. J. Airways”. He then turned a somersault and said “They do not necessarily show deposits in cash. These are journal vouchers. Journal vouchers are not prepared when cash is received or paid. Journal vouchers are made when adjustments are made. And these adjustments are in the form of deposits.”

(4) Again, let us see how Sodhbans helped R. Dalmia in perpetuating this theory of the issued Ordinary and Preference shares having been paid up in cash. As we have observed above, he took the stand in certifying the Statutory Report that the Share Capital was issued and paid for in cash. He had to keep it up. If we look at FORM ‘F’ which laid down a form of Balance Sheet under the Indian Companies Act, 1913, and which had to be observed by all companies, under the heading of “capital”, a distinction had to be made between “shares issued for payments in cash” and “shares issued as fully paid up pursuant to any contract without payments being received in cash”. The easiest way for Sodhbans to get out of his predicament was just to ignore this statutory requirement and say nothing. Therefore, we find in the two Balance Sheets he audited as at 31st July,

1950 and 31st July, 1951 (Exs. 46 and 47) that he was silent about this requirement. He knew that the issued capital was never received in cash, but having so stated in the Statutory Report, the best thing he could do was to forget the requirements. In his examination on this point, he said :—

“I am aware of the fact that Form ‘F’ requires that there should be distinction between shares issued as fully paid up without payments being received in cash, and shares issued for payments in cash. There is no such distinction in the balance sheet of D. J. Aviation. The reason is because the amount received in respect of the shares was deposited with other companies as cash recoverable. According to me, Form ‘F’ makes no distinction between amounts that are received in cash and amounts that are owing. A receipt by the company and payment by the company is not necessary when the amount is shown as received in cash.”

He then went on to say that he would substantiate his statement from authorised books and promised to send references before 24th January, 1959, he having been examined on 20th January.

(5) The above testimony clearly indicates that the so-called “deposits” were never received in cash but book adjustments were made. To become a deposit with a Bank or with any other party, the company must first have the cash that it can deposit. We have seen here that no cash was received; but paper entries were passed to create a company with an issued capital of Rs. 1 crore, except for Rs. 10,000 received against the first allotments and Rs. 2,036-0-6 for preliminary expenses. The balance of Rs. 99,87,963-15-6 was not in existence, and the statements in paragraph 1 of the Statutory Report that the shares were allotted for cash and these amounts were received in paragraph 2 (Receipts and Payments Account), all of which statements were certified as correct by Sodhbans, were wholly incorrect and false. He is equally guilty of not observing the requirements of Form ‘F’ which was done obviously on purpose, and for reasons mentioned in Paragraph 4 above.



PART 2

**MANIPULATIONS AND ANTE-DATING :
MOTOR VEHICLES SECTION**



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CHAPTER I

UNDER STATEMENT OF SALES FOR HALF YEAR ENDED 31-12-1948

The sales of Disposal Vehicles and Stores during the half year ended 31-12-1948 were fraudulently understated in the audited accounts of Allenberry to the extent of Rs. 16,27,258.

The object was to understate the profits of Disposal Vehicles and Stores business in order to benefit Allenberry and the D. J. Group.

The total sales shown in the audited accounts (Ex. 65) for Disposal Vehicles and Stores for the half year ended 31-12-1948 were Rs. 58,77,559 as under :

	Rs.
Vehicles	36,46,391
Stores	22,31,168
	<hr/> 58,77,559 (Ex. 108)

In a letter dated 2nd September, 1949 (Ex. 267/6-7) from Allenberry, Calcutta, to Allenberry, New Delhi, marked for the attention of Shital Prasad Jain, N. C. Roy, Accountant, showed sales for the relevant half year as follows :

	Rs.
Vehicles	38,70,334
Stores	24,04,817
	<hr/> 62,75,151

Also in letter dated 7th September, 1949 (Ex. 400) from Allenberry, Delhi, to Allenberry, Calcutta, B. N. Kanagat mentions the same figures for the sale of Vehicles, namely, Rs. 38,70,334. But, in his comments, he adds that the sales for the half year ended 31-12-1948 amount to Rs. 51 lacs and odd and complains that N. C. Roy has shown only Rs. 38,70,334.

In reply to the last mentioned letter, N. C. Roy from Calcutta wrote to Allenberry at New Delhi (Ex. 399) on 4th October, 1949 giving the figures of Rs. 38,70,334 for sales of vehicles and showed the details of branch-wise sales. In the same letter, N. C. Roy confirmed the figures of stores sales at Rs. 24,04,817 but added that this figure did not include the sales of branches at Nagpur and Dacca.

In the absence of account books, it is not possible to determine whether the vehicle sales are, in fact, Rs. 51 lacs and odd or whether they are Rs. 38,70,334. In either case there was a suppression of sales, and assuming

the sales of vehicles to be Rs. 51 lacs, the understatement was Rs. 16,27,258 as follows :

	Rs.
Vehicles	51,00,000
Stores	24,04,817
	<u>75,04,817</u>
<i>Less:</i>	
Sales shown in the audited accounts	58,77,559
	<u>16,27,258</u>

In the alternative, the understatement was at least Rs. 3,97,592 if the vehicles sales are taken at Rs. 28,70,334 as under :

	Rs.
Vehicles	38,70,334
Stores	24,04,817
	<u>62,75,151</u>
<i>Less:</i>	
Sales in the audited accounts	58,77,559
Under statement of sales	<u>3,97,592</u>

As we have stated, the object was to understate the profits to benefit Allenberry and the D. J. Group and the benefit of the suppression of sales arose by virtue of the saving in Income-tax. If the suppression is to the extent of Rs. 16,27,258, then the benefit sought to be reaped by saving of taxes amounts to Rs. 7,11,925; or, alternatively if the suppression amounts to Rs. 3,97,592, then the corresponding benefit would be Rs. 1,73,946.

The persons directly responsible are those who signed the balance sheet as director, namely, Shital Prasad Jain, Brijmohanlal Raizada, K. B. L. Chordia and the Secretary of the company, B. N. Kanagat.

Of these, Shital Prasad Jain has not replied and K. B. L. Chordia has taken technical objections.

B. N. Kanagat has stated that he was not concerned with the affairs of the company for the half year ended 31-12-1948 and in any case he had nothing to do with the accounts of the company.

B. L. Raizada has disclaimed all knowledge, stating that he was sitting in Delhi.

H. D. Bishnoi has replied that he has not signed the balance sheet nor did he remember having authorised the entries on the basis of which the balance sheet was prepared.

Shanti Prasad Jain and J. Dalmia have given the usual reply that as the matters concerned took place after 31-5-1948, they are neither concerned nor responsible.

CHAPTER II

INFLATION OF SELLING AND DEPOT EXPENSES OF DISPOSAL BUSINESS FOR THE H.Y.E. 31-12-48

The selling and depot expenses of the disposal vehicles and stores business were wrongfully inflated in the audited accounts of Allenberry for the half year ended 31-12-1948.

The object of the inflation was,

- (a) to give a gloomy and distorted picture of the disposal business during the period immediately following the termination of the Joint venture in order to justify the termination; and
- (b) to understate the profits with the consequent advantages it entailed in the evasion of Income-tax.

The audited accounts of Allenberry for the year ended 31-12-48 (Ex. 65) show disposal vehicles selling expenses and depot expenses at Rs. 67,97,692 as follows :—

	Rs.
Vehicles Selling Expenses	23,26,650
Depot Expenses	44,71,042
	76,97,692

The total profits of the Joint Venture for the four half years ended 30th June, 1948 were Rs. 45,41,742, notwithstanding the fact, as mentioned in the earlier Volume, that the profits were suppressed during that period; but in the half year ended 31-12-1948, that is to say, 6 months immediately following the termination of the Joint Venture, the audited accounts (Ex. 65) show a direct loss of Rs. 9,20,133 and that too before any adjustment was made to charge the 'cost of sales' against the sales affected in the half year. If that had been done, the loss would have been much higher than Rs. 9,20,133.

The above mentioned loss in the accounts was due to wrongful inflation of expenses. And if we are to compare the percentage of similar expenses to sales as between half year ended 31-12-1948 on the one hand, and the four half years of the Joint venture ended 30-6-1948 and the two succeeding years 31-12-1949 and 31-12-1950 on the other hand, we cannot but arrive at the conclusion that there was manipulation of the expenses. The percentage of selling and depot expenses commencing with the half year ending 31-12-1946 up to the year ended 31-12-1950 are as follows :—

(1)				(2)	(3)	(4)
Period				Sales	Expenses (a) Selling (b) Depot	Percentage of (3) to (2)
				Rs.	Rs.	Rs.
31-12-1946	..	..	..	56,78,367	(a) 7,40,628	(a) 13.04%
(Ex. 58)	..	..	..		(b) 11,69,204	(b) 20.59%
					19,09,932	33.63%

(1)	(2)	(3)	(4)
30-6-1947 (Ex. 59)	2,00,87,830 (a)	29,58,532 (a)	14.72%
	(b)	28,24,030 (b)	14.05%
		57,82,562	28.77%
31-12-1947 (Ex. 60)	1,53,59,993 (a)	37,88,773 (a)	25.31%
	(b)	21,65,597 (b)	14.09%
		60,54,370	39.40%
30-6-1948 (Ex. 61)	1,55,19,797 (a)	26,14,490 (a)	16.84%
	(b)	17,71,886 (b)	11.41%
		43,86,376	28.25%
31-12-1948 (Ex. 65)	58,77,559 (a)	22,26,650 (a)	39.58%
	(b)	44,71,042 (b)	76.06%
		67,97,692	115.64%
31-12-1949 (Ex. 66)	1,33,25,408 (a)	17,07,012 (a)	12.81%
	(b)	30,88,276 (b)	23.17%
		47,95,288	35.98%
31-12-1950 (Ex. 424)	1,04,88,165 (a)	15,64,115 (a)	14.91%
	(b)	11,18,946 (b)	10.66%
		26,83,061	25.57%

It is also pertinently noticeable that there was an abnormal fall in the number of vehicles sold in the half year ended 31-12-1948, and up to 31-12-1950 the sales in the half year under review were the lowest on record, namely, 1,023.

The absurdity of this is further high-lighted by the fact that the vehicles sold during the relevant period totalled Rs. 36,46,391, while the major expenses for re-conditioning, overhauling, repairing and consigning totalled Rs. 59,32,959 as follows :—

	Rs.
Re-conditioning expenses	5,81,392
Stores and Spare parts (Consumption)	25,01,421
Salaries & Wages (Production)	17,49,020
Consignment Expenses	11,01,123
	(Exs. 425/p. 9 & 11).

Again, to explain it in another way, the total sales of disposal stores and vehicles amounted to Rs. 58,77,559 whereas vehicles selling expenses and depot expenses amounted to Rs. 67,97,692. It is admitted that some of these expenses may constitute non-variable overheads, but a large part of these expenses is directly connected with sales or are overheads of a variable nature.

As we have stated above, the disposal vehicles during the half year have shown a direct loss before charging the 'cost of sales', and if one were to assume such cost at 60% of the sale price, the 'cost of sales' chargeable against the sales of Rs. 36,46,391 would amount to Rs. 21,87,834.

Therefore, there is very little room for doubt that manipulation had taken place in that half year.

In the absence of the account books and the relevant documents, it is not possible to determine the exact amount of manipulation, but even if we are to take the estimate most favourable to the persons concerned by comparing the highest percentage of expenses to sales which happened to be in the year ended 31-12-1949, the extent of manipulation would amount to approximately Rs. 43,13,678. The relevant details have shown in Appendix 'A' of the Statement of Matters concerning Manipulation—Section F: Allenberry.

The persons responsible are the same as mentioned in the preceding Chapter on understatement of sales for the half year ended 31-12-1943.

CHAPTER III

FRAUDULENT MANIPULATION OF INDIRECT EXPENSES FOR 1949, 1950 AND 1951

The extent of the manipulation in indirect expenses was as below :—

1949—Rs. 16,44,458 Excess charged (Ex. 66)

1950—Rs. 2,82,308 Excess charged (Ex. 424)

1951—Rs. 12,66,330 Under charged (Ex. 419).

The object of the manipulations was to bring the profit and loss in Allenberry's business, other than that of disposal vehicles and stores, at nil in each of the years ending 31-12-1949, 31-12-1950 and 31-12-1951, in order to—

- (a) evade the proper incidence of income-tax; and
- (b) to put off the assessment of profits of the disposal stock business to tax until the whole of the deal was concluded.

There was no allocation of indirect expenses as between the normal business of Allenberry and the disposal stock business on any recognised basis of apportionment, but all the expenses were debited in the first instance to the general profit and loss account, and the excess of the debit side over the credit side of the Profit & Loss Account was charged off to the disposal stock business account, reducing the general Profit & Loss Account to a nil figure of profit or loss. Moreover, since no attempt was made to value the closing stock of the disposal goods at the end of each year but the balance was merely carried forward as stock in hand, the effect of charging inflated expenses to the disposal stock business account was likewise to inflate the value of the closing stock from year by year.

As the allocation of indirect expenses to the general business and the disposal stock business was not done on any recognised basis and since the relevant books of accounts have not been made available, the allocation has been made on a proportionate basis, namely,

- (a) interest has been allocated proportionately as between the disposal stock and other stocks on the assumption that interest was incurred on the amount laid out in the stocks; and
- (b) the indirect expenses have been allocated in the proportion of the turnover of the respective sections.

On this basis the following position emerges :—

Period	Total indirect Expenses	Amount attributable to Disposal Stock Business on a proportionate basis	Amount charged to Disposal Stock Business	Excess (+) or deficiency (—) charged to Disposal Stock Business
1949	81,11,165	44,56,373	61,00,831	(+)16,44,458
1950	62,10,389	39,89,802	42,72,110	(+)2,82,308
1951	40,91,189	30,54,494	17,88,164	(—)12,66,330

It may be argued that it did not make any difference as to whether two overheads were excess allocated or short charged as between the two departments of the same business, but the excess or the under charge to reduce the general business results to nil, was done probably with the apprehension that the income-tax authorities might not have allowed the loss of the general business to be set off against the profits of the disposal business in the later years, considering them to be separate business.

The persons responsible were the following directors who signed the balance sheets as of the respective dates shown against their names :—

- (1) B. L. Raizada (31-12-1949)
- (2) M. L. Raizada (31-12-1949)
- (3) R. Sharma (31-12-1949, 31-12-1950 and 31-12-1951)
- (4) R. P. Mittal (31-12-1950 and 31-12-1951).

The Secretary, R. P. Gurha, signed the balance sheet as on 31-12-1951.

B. L. Raizada in his written statement has said that although he signed the balance sheet as at 31-12-1949, he is not responsible because the Commission itself has named certain persons, though not directors, as being in control of the affairs of Allenberry or at the head of the Control Office incharge of accounts. From this he infers that he is personally not guilty of manipulations as these might have been engineered by others or he had no knowledge of the details. Needless to say, this is a very novel defence because assuming that other persons may have been in control of the accounts, the Director concerned is certainly on a higher plane than those who look after the accounts of a company.

M. L. Raizada, while admitting that he signed the balance sheet, has stated that he was appointed on 17-3-1951 and because he saw the balance sheet properly checked and after seeing the signatures of the Auditors and other Directors, he must have signed the balance sheet 'just as a matter of conformity'. He then goes on to say that even as a Director he was not incharge of the accounts sections nor was he sitting in the Control Office taking initiative or deciding matters of accounting procedure or policy. This again is a very novel defence, if not a stupid one, because he regards the signing of a balance sheet in his capacity as a Director as 'a mere conformity' and also considers that because he is not looking after the accounts he as a Director is not responsible. There is hardly an instance in any company where all or any of the Directors are looking after the accounts. If every Director raises the same kind of defence, the duties of a Director and specifically those where he takes responsibility for the signing of the accounts would be reduced to a mere farce.

Both R. P. Gurha and R. P. Mittal have raised technical objections without entering into the merits of the case.

Shanti Prasad Jain and J. Dalmia have stated that they were neither concerned nor responsible because all of the above took place after 31-5-1948.

CHAPTER IV

SUPPRESSION OF PROFIT ON DISPOSAL BUSINESS IN THE H.Y.E. 31-12-48, YEAR ENDING 31-12-1949 AND YEAR ENDING 31-12-1950

In the h.y.e. 31-12-1948, that is to say, in the six months immediately following the termination of the Joint Venture, Allenberry's audited accounts disclosed sales amounting to Rs. 58,77,559, against which were charged inflated selling and depot expenses, as explained in the preceding Chapter, amounting to Rs. 67,97,692, thereby showing a loss of Rs. 9,20,133. This loss was before any adjustment for the 'cost of sales' against the sales credited in the accounts, and had this been done, the loss would have been still larger than what was disclosed.

In Chapter I, we have indicated that the sales were suppressed by a figure of Rs. 16,27,258, and in Chapter II, we have indicated that on the most favourable interpretation the selling and depot expenses were inflated by Rs. 43,13,678.

Thus, there were considerable manipulations in the accounts of this half year.

In the two years ending 31st December, 1949 and 1950, the sales credited in the audited accounts, assuming these to be correct, amounted to Rs. 1,32,94,892 and Rs. 1,16,77,430 respectively. The audited accounts show neither a profit nor a loss in the disposal business during these two relevant years nor was any adjustment made for the cost of sales chargeable against the sales. Instead, the disposal stock account was credited with the sales, debited with the expenses, and the resultant figure was merely carried forward as the value of the stock on hand. The closing stocks in the relevant balance sheets were described as being "at book value", and the so-called book value was arrived at in the manner just indicated.

The object of these manipulations was—

- (a) to suppress the fact of the disposal stocks being substantially under-valued during the Joint Venture and taken over by Allenberry at book value on the termination of the Joint Venture;
- (b) to evade the anomalous position which would have arisen in the value of the stocks if the previous policy of deliberate inflation of the cost of sales had been pursued in the post-joint venture period; and

the Joint venture period, the average percentage of profit made in the post-joint venture period amounted to 23% of the sales. Now the sales in the relevant periods are as follows :—

Half year ended 31-12-948

	Rs.	Rs.
Sales credited in the P. & L. A/cs	58,77,559	
Sales suppressed	16,27,258	
		75,04,817
Sales credited in the audited accounts for 1949		1,32,94,892
Sales credited in the audited a/cs, for 1950		1,16,77,430
		<u>3,24,77,139</u>
Profit at 23%		74,69,741
<i>Less: Commission</i>		
1948 at 2½%	Rs.	
on sales of Rs. 75,04,817	1,87,620	
<i>Less charged in the a/cs.</i>	1,34,216	
		53,404
1949 at 2½% on Rs.1,32,94,892	3,32,372	
<i>Less: charged in the a/cs.</i>	1,86,838	
		1,45,534
1950 at 2½% on sales of Rs. 1,16,77,430	2,91,936	
<i>Less: charged in the a/cs.</i>	56,411	
		<u>2,35,525</u>
		4,34,463
	Profits from 1-7-1948 to 31-12-1950	<u>70,35,278</u>

The above adjustment for commission has been made at 2½% to assess the position as it would have been had the Joint venture continued and had Allenberry been paid 2½% on sales as in the Joint venture period. The actual debit in the accounts for the commission has been deducted from this 2½%. From this it will be seen that the profits suppressed from 1-7-1948 to 31-12-1950 amounted to Rs. 70,35,278 and had the Joint venture continued half of this profit, namely Rs. 35,17,639 would have ensured for the benefit of D. J. Airways.

As we know that the Joint-venture was, in fact, terminated, Allenberry succeeded in evading its proper incidence of income-tax on Rs. 79,55,411 as under :—

	Rs.
Suppressed profits as above	70,35,278
Loss for the h.y.e. 31-12-1948 as shown in the audited accounts ..	9,20,133
	<u>79,55,411</u>

As the books of accounts have not been produced to us, we are unable to say that the accounts for the years succeeding 1950 disclosed any portion of these suppressed profits. The books are in the possession of Allenberry and they have not chosen to produce them.

One thing is at least clear that for the year ending 31-12-48 there was a suppression of profits amounting to Rs. 17,26,107 (*i.e.* @23% on sales of Rs. 75,04,817) and the benefit sought to be reaped by saving of taxes was

estimated at approximately Rs. 1,22,253. Moreover, there would not have been any carried forward loss to be set off against future profits.

Further the excess charge of indirect expenses to Disposal Stock Business account in 1949 and 1950 resulted in a suppression of its profits to the extent of Rs. 16,44,458 and Rs. 2,82,308 respectively. Income-tax, which would have been leviable on such suppressed profits (at the time of assessment on the conclusion of the deal as planned by Allenberry) was estimated at Rs. 7,90,689.

CHAPTER V

ANTE-DATING OF THE ACCOUNTS OF ALLENBERRY FOR THE YEAR ENDED 31-12-1948

The accounts for the year ended 31-12-1948 purported to have been signed on 13-3-1950 were in any event incomplete till 17-6-1950.

On 11th March, 1950 (Ex. 270/P. 257), N. C. Roy forwarded to New Delhi, the Profit & Loss Account and the consolidated balance sheet as at 31-12-1948, and in the covering letter he stated that he had not received all the necessary schedules from the branches and so he had not shown the assets and liabilities properly. In reply to this, B. N. Kanagat wrote on 15th March, 1950 (Ex. 270/256) impressing upon N. C. Roy to remind such of the branches as had not supplied the necessary information. Accordingly, N. C. Roy on 22nd March, 1950, wrote to the branches at Lucknow and Bombay for immediate supply of the detailed statements as they were urgently required for audit purposes (Ex. 270/240-41).

On 30th March, 1950, R. P. Gurha, Accountant at New Delhi, forwarded to the Dalmianagar Office the final Trial Balances as at 31-12-1948, after incorporating the Pipeline and Automobile Section Calcutta accounts as on that date, together with certain advices relating to the transfer of the debit and credit balances to be incorporated in the Delhi Books for preparing the Company's final balance sheet (Ex. 408).

On 9/17th June, 1950, L. N. Baid, Accountant at Dalmianagar forwarded to Delhi many papers relating to the 1948 accounts, such as, copies of the balance sheet, Trading and Profit & Loss Account, Trial Balance, Schedule of Capital Expenditure etc. (Ex. 274).

In that letter L. N. Baid stated that the Balance Sheet and Profit & Loss Account should be got signed by Shital Prasad Jain before handing them over to the Auditor for their signature; and added that after getting them so signed by the Auditors, the Balance Sheets etc., should be signed by the Directors present in Delhi. It was also pointed out by L. N. Baid that the names of the Directors could be known by seeing the Minute Book already sent to Delhi.

N. C. Roy, Accountant of Allenberry at Calcutta was cross-examined concerning Ex. 274 and the questions put to him and his answers are as follows :—

"A. I identify the signature of Mr. L. N. Baid.

Q. My question to you is all these items relate to the audit of balance sheet profit and loss account and trading account of Allenberry for the year ended 31st December, 1948?

A. Yes, that is correct.

Q. Can you give us any reason why the audit for the year ended 31st December, 1948 was not completed till after the date of this letter, exhibit 274, June 1950?

A. No. I cannot give any reason."

Similarly, D. N. Bannerjee was cross-examined on this point and his answer after reading Ex. 274 was that "the suggestion made by you is correct".

The suggestion was that the accounts for the period ended 31-12-1948 were not completed before 17-6-1950.

The persons responsible for the antedating were the Directors of the Company, namely,

(1) Shital Prasad Jain.

(2) B. L. Raizada.

(3) K. B. L. Chordia.

and the Secretary, B. N. Kanagat.

Shital Prasad Jain has submitted no reply and B. L. Raizada disclaims all responsibility on the ground that he was a lay person and relied on the papers having been signed by the Auditors and the Senior Directors in which event, he states, he must have signed as a matter of routine.

K. B. L. Chordia has taken technical objections and not submitted any reply. Whereas B. N. Kanagat has disclaimed all responsibility on the ground that he was not in-charge of accounts.

Shanti Prasad Jain has given the usual reply that he was neither concerned nor responsible because all these took place after 31-5-1948.

CHAPTER VI

ANTE-DATING OF THE ACCOUNTS OF ALLENBERRY FOR THE YEAR ENDED 31ST DECEMBER 1951

The audited accounts of Allenberry for the year ending 31st December, 1951 were fraudulently ante-dated in that though purporting to have been signed on 14th December 1952, the relevant audit was incomplete at any rate up to 11th November, 1953. This is not the first instance of accounts having been ante-dated as will be recapitulated later.

The object of the ante-dating was to enable the directors of Allenberry to make it appear that the audited accounts had been laid before the Company in General Meeting within the statutory period laid down in section 131 of the Indian Companies Act, 1913.

The persons responsible are the following Directors: R. Sharma, R. P. Mittal and the Secretary, R. P. Gurha all of whom signed the accounts. The auditor who was responsible was one L. R. Sharma, an employee of one of R. Dalmia's concerns and not a Chartered Accountant. It may be added that, prior to the amendment of the Companies Act in 1956, the accounts of private companies were not required to be audited by Chartered Accountants.

Particulars

1. (i) Allenberry was running the business in disposal vehicles and stores along with its other Automobile business and this unit was styled as "Allenberry & Co Ltd. (Automobile Section)."

(ii) Allenberry was also carrying on business in Drum and Pipeline and Fittings stock purchased from the Field Commissioner U.S.A. and this unit was styled as "Allenberry & Co. Ltd. (Drum & Pipeline Section)."

2. (i) Up to 30-6-48, Allenberry (Automobile Section) carried on the aforesaid business in Disposal Vehicles and Stores as a Joint Venture with D. J. Airways and prepared for the same only a Consolidated Trading and Profit & Loss Account half yearly from 31-12-1946 to 30-6-1948.

(ii) On the termination of the Joint Venture, Allenberry acquired the entire unsold disposal stocks of the venture and carried on the business subsequently in its own name and account along with its other Automobile and Drum and Pipeline business.

(iii) The final accounts of both the units namely, the "Auto-Section" and the "Drum & Pipeline Section" for each accounting period were merged together at the close of the period so that a consolidated Profit & Loss Account and Balance Sheet were compiled half-yearly till 31-12-47 and annually thereafter and got them audited.

(iv) Thus the audit of the final consolidated accounts of Allenberry for any period could not have been completed without first finally closing its relevant accounts of the Drum & Pipeline Section.

3. The audit of the accounts of Allenberry for the year ending 31-12-51 by the Auditor Shri L. R. Sharma purports to have been completed on 14-12-52, though, in fact, it was completed later.

We have relied on the following material which puts the matter beyond doubt that the accounts were ante-dated :—

1. On 13-12-1952—Shri H. C. Amiable, Manager, New Delhi Branch intimated Director, R. Sharma at Control Office, in reply to his letter, dated 12-12-1952, that all the particulars called by L. C. Modi had been sent, except the Schedules and the Final Balance Sheet as at 31-12-1951 and that the latter would be sent on 15-12-1952 for their approval and scrutiny as per Gurha's instructions. (Ex. 765/P. 18)

2. Between 18-2-1952 and 19-12-1952 the following appear—(a) on 18-12-1952 L. C. Modi from Calcutta reminded Delhi Office in connection with 1951 *closing* for intimating him the position of reconciliation of the Calcutta Office account with them as on 31-12-1951 without further delay. (Ex. 765/P. 17)

In reply dated 19-12-1952 Calcutta Office was informed that R. P. Gurha, Secretary, would finalise some disputed items of Pipeline and Drum Section for 1951 *closing* by the end of that week. (Ex. 765/P. 16).

(b) In letter dated 18/19-12-1952, the Calcutta Accountant reminded Lucknow Office for immediate submission of the *amended Trial Balance* as on 31-12-51 together with necessary Schedules. (Ex. 765/P. 13)

He also called for details for the sale of surplus and old furniture to meet enquiry from the Income Tax Department.

(c) On 18-12-52, L. C. Modi from Calcutta pointed out to Control Office, Delhi, a discrepancy of Rs. 4,824 in the *opening* credit balance of Depreciation Reserve of Pipeline and Drum Section as on 1-1-51 re-transferred to Calcutta books from Delhi Books. He further wrote about the raising of necessary adjustment entries as on 31-12-50 in respect of the said discrepancy in Calcutta Books. (Ex. 765/p. 14, 15)

3. On 29-12-1952—In connection with 1951 *closing* the Accountant of Jullundur Branch forwarded to Calcutta Office the *final* Trial Balance and the Balance Sheet of the Ambala Cantt. office as on 31-12-51 along with the Schedules and Lists. (Ex. 765/P. 12)

4. On 10-1-1953—D. N. Bannerjee, Calcutta Accountant, enquired from the control office at Delhi about the certified bank balances as on 31-12-51 in connection with the Bank Reconciliation Statement for the purpose of 1951 *closing* of New Delhi Branch. (Ex. 765/P. 11)

He also sought confirmation about his action in allowing 10% commission on disposal sales to New Delhi Branch alone and also information as to how long the half-profit of the Branch should be payable to Raizada Brothers.

5. On 24-1-1953—The Calcutta Accountant wrote to Jullundur Branch confirming their debit Balance in Calcutta books at Rs. 1,66,361-11-9 as on 31-12-51. He also directed the Jullundur Office to find out the small discrepancy of Rs. 267-4 quickly and to send the remaining Schedules. (Ex. 765/P. 9)

6. On 31-1-1953—(i) The Calcutta Office wrote Connaught Circus Office to point out that their latest Trial Balance for 1951 *closing* sent to Calcutta showed a discrepancy of Rs. 900 (concerning Jullunder Branch) in the balances of the account between the two offices as per their Books. (Ex. 765/P. 8)

Calcutta Office further directed it to pass necessary entries for two sums of Rs. 400 and Rs. 500 for tallying the balances under intimation to them so that they should not "delay any more to finalise the accounts of 1951".

Copy of this communication was sent to control office, Delhi and Jullunder Branch.

7. Between 16/17-2-1953 and 20-1/3-1953 the following appear—The Calcutta Accountant informed Delhi office that the books of Tezgaon Branch of Pipeline Section showed Rs. 3,56,074 as stock-in-trade as on 31-12-1950. He sought instructions as to how the same was to be adjusted in 1951 *closing*. (Ex. 765/P. 4)

On 12-3-1953—The Delhi Office was reminded about the earlier letter as "the matter related to the *closing* of 1951 accounts". (Ex. 765/P. 2)

On 20-1/3-1953—The Secretary in reply to the aforesaid letters directed that the value of stock-in-trade should be adjusted against the sales in 1951 and that in case there were no sales at Dacca during that year, the value of stock was to be carried forward. (Ex. 765/P. 1)

8. Between 21-7-1953 and 29-7-1953, the following appear—D. N. Bannerjee from Calcutta informed R. P. Gurha, Control Office, Delhi that Allenberry's Sales Tax case had been fixed on 31-7-1953 for which Balance Sheet would be required. He, therefore, sought instructions as to whether an adjournment should be asked for on the plea that their books were under audit. (Ex. 413A/P. 125-6)

After some further correspondence with R. P. Gurha on 23-7-53 R. P. Mittal, Director from Calcutta informed Control Office, Delhi that they had already applied for necessary adjournment on the plea that books of accounts for 1951 were under audit. He, therefore, asked therein for a confirmatory letter to this effect for production before the Sales Tax Officer if the latter insisted. (Ex. 413A/P. 115, 116)

9. Between 7-8-1953 and 11-8-1953, the following appear—on 7-8-53, D. N. Bannerjee from Hazra Road, Calcutta, enquired from R. P. Gurha at Delhi Office why they had debited Rs. 25,000 to Drum and Pipeline Section for cost of sales of Pipe & Fittings during January-February 1951. He sought immediate clarification of the position so that 1951 accounts could be "finalised now". (Ex. 739/P. 1, 2, 6)

R. P. Gurha replied on 11-8-1953 that the said cost of sales was credited to D.C.P.M. by debiting Calcutta Drum & Pipe Section and had to be adjusted because D.C.P.M. had to close their books for February, 1951.

10. On or 13-8-1953 and thereabout—D. N. Bannerjee Calcutta Accountant intimated R. P. Gurha of Control Office, Delhi, in connection with 1951 *closing* of Dacca Branch that there appeared to be an excess stock of drums at Dacca as on 31-12-51 on the basis of subsequent Physical Stock taking. (Ex. 413A/P. 81 and 135)

He, therefore, sought instructions and suggestions for reconciliation of this excess stock.

Regarding this discrepancy, R. P. Gurha sent some instructions to R. P. Mittal and forwarded a copy thereof on 13-8-1953 to R. Sharma. (Ex. 808/P. 20, 27, 28)

Finally, R. P. Gurha sent a few statements to Bannerjee and explained that there was no excess of Drums and further instructed that as desired by "Sharmajee", *the accounts for 1951 should be finalised* on the basis of these statements. One of these statements shows the stock position of Steel Sheets as at 16-8-53. (Ex. 413A/P. 81, 82).

11. *In or about September, 1953*—R. P. Gurha directed Bannerjee of Calcutta to send him signed copies of the *consolidated Trial Balances* as on 31-12-51 as the matter was of "serious importance" and that the detailed statements might follow. (Ex. 413A/61)

He further instructed that "the *pending* adjustments and reconciliations" should be shown under the heads "Branch reconciliation suspense" and/or "Suspense pending for adjustment".

Note :—The exact date is not given on the letter referred to above but the dates of the other correspondence preceding and succeeding the same in the relevant file of Allenberry indicates that all this took place round about September.

12. 2-11-1953—D. N. Bannerjee from Calcutta wrote to Gurha at Delhi enumerating certain difficulties raised by the Sales Tax Officer in connection with their claim for exemption of sales of Rs. 1,11,000 representing supplies to depots and branches. (Ex. 413A/16)

He pointed out that the Sales Tax Officer would "keep this point pending until the audited Balance Sheet is submitted to him".

He also informed that he had discussed the matter with "Dudanijee" and sought Gurha's suggestions so that the needful might be done by Calcutta Office *before the finalisation of 1951 accounts*.

13. 11-11-1953—The Accountant, Calcutta forwarded to the branches at New Delhi, Lucknow, Bombay, Lahore, Dacca and Jullunder *provisional opening balances* as on 1-1-1952. (Ex. 413A/P. 7, 9)

It was pointed out that *if there be any change* these would be communicated afterwards.

It is therefore abundantly clear from the above that the accounts for the year ended 31st December, 1951 were not finalised until at least as late as 11th November, 1953.

D. N. Bannerjee, Accountant of Allen Berry, was questioned at length with regard to this ante-dating, and various exhibits were shown to him. He admitted in each case that it was correct to say that the accounts had not been prepared until the respective dates of the exhibits. For example, D. N. Bannerjee was shown Ex. 739/P. 6 which is the letter dated 7th August, 1953 from him to R. P. Gurha and when he was asked whether it was true that up to August 1953 the accounts for the year 1951 were not finalised, he stated "Yes, it is correct." Similarly when he was shown Ex. 413A/P. 16, which is the letter written by him to R. P. Gurha at

Delhi on 2nd November, 1953, he again admitted that the accounts for 1951 were not finalised until that date.

D. N. Bannerjee was also asked whether it was true that the balance sheet could not have been prepared before 11th November, 1953, his answer was in the affirmative. When he was asked whether he would agree that the date on the accounts, namely, 14th December, 1952 was clearly wrong, he agreed also. D. N. Bannerjee has clearly admitted at the end of his cross-examination that the accounts could not have been prepared before 11th November, 1953, as evidenced by the following questions and answers :

Q. Quite right. But you have told us very clearly that this balance sheet could not have been prepared till December 1953 ?

A. Yes. I am quite sure that this balance sheet (Ex. 419) and the other documents, Trading and Profit and Loss Account for the year could not have been prepared before 11-11-53.

Q. I take it that the same answer must apply to the disposal stock business account for the year 31-12-51 ?

A. Yes.

Q. Therefore, the point of signing earlier or later would not make any difference so far as the date, 14-12-1952 is concerned. None of these gentlemen could have signed these documents on 14-2-1952 ?

A. Yes, that is correct.

R. Sharma, one of the directors, who signed the balance sheet, expired prior to the issue of the Statement of Matters which was therefore not served on him. R. P. Mittal, the other director, has raised technical objections. L. R. Sharma, the auditor, has given vague explanations that he is not able to recollect at this stage the points raised by the Commission. Shanti Prasad Jain and J. Dalmia have given the usual reply that they were not concerned with the matter as it related to the period subsequent to 31st May, 1948.

We have stated earlier that this was not the first instance of ante-dating. In the Chapter on D. J. Airways, we have shown that the Joint Venture accounts for the four half yearly periods ending 31-12-46 to 30-6-48 were all fraudulently ante-dated. Similarly, in the preceding Chapter, we have shown how the accounts of Allenberry for the year ended 31-12-48 were also fraudulently ante-dated. Also, in the case of Allen Berry's accounts for the year ended 31-12-46, which were supposed to have been considered by the Board of Directors at their meeting held on 13-9-47 (Ex. 252A) and 'adopted' at the Annual General Meeting supposedly held on 30-9-1947 (Ex. 253). In this case it has been clearly proved that the accounts bear the date 10-12-47 and as such could not have been placed either before the Directors' meeting held on 13-9-47 or the shareholders' Annual General Meeting held on 30-9-47.

There was thus constant and utter disregard of the provisions of the Companies Act to suit the ends of the D. J. Group, and in particular R. Dalmia. While taking full advantage of the institution of corporate enterprise and the benefit of limited liability, they were not prepared to fulfil any of the obligations imposed on them by the Companies Act, and in so many cases treated the provisions as purely farcical.

PART 3

**MANIPULATIONS AND ANTE-DATING :
DRUM AND PIPELINE SECTION**

Contents

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CHAPTER I

TRANSFER OF RS. 52,00,000 TO D.C.P.M.

This relates to a transfer of Rs. 52,00,000 from the account of the Drum and Pipeline business in Allenberry's books to the account of D.C.P.M. in the same books.

It is linked up with the fraudulent transfer of the 2323 vehicles that we have examined in the case of the joint venture partnership between D. J. Airways and Allenberry. It is linked in the sense that the dates are the same, the method employed is much the same and one of the objects, namely avoidance of income-tax liability is common to both cases.

In the joint venture case Allenberry bought up the entire disposals stocks of vehicles and stores of the Director General of Disposals. In this case Allenberry bought up the entire stocks of Pipelines, Fittings, Pumping sets, Steel sheets, and Drum Manufacturing plants in India and Pakistan from the Field Commissioner of the U.S.A. for Rs. 64,39,455 as below (Exs. 402, 402A, 760).

	Rs.
Cost as per contracts D/19-2-46 & 21-2-46	55,15,000
Customs Duty	9,24,455
	<hr/> 64,39,455

During the course of that year (1946) Allenberry disposed of stocks worth Rs. 9,46,397 and adjusted the cost of the Drum Manufacturing Plants amounting to Rs. 2,37,944 so that the closing stock as on 31-12-46 was Rs. 52,55,105 as shown below (Exs. 758, 759, 84, 250, 747).

on or about 19-5-49, the date on which the final audited accounts of Allenberry for the half-year ending 30-6-47 and 31-12-47 and those of D.C.P.M. for the year ending 29-2-48 were signed. (Exs. 63, 265 & 461.) The entries were ante-dated.

The first thing to note in this connection is that Allenberry's usual practice was to credit all its sales in the *Sales Account*. The only deviations were (a) in this case where the entry showing this sale of Rs. 52,00,000 is entered in the *stock account*; and (b) in the case of the 2323 vehicles which we have dealt with elsewhere. There, also, the sale which purports to have been made on the same date, 28-2-47 was recorded direct in the *stock account*.

In the case of the 2323 vehicles we have shown at length how a series of entries relating to the sale of the vehicles of D.C.P.M. and of the subsequent re-sales were fraudulently ante-dated, both in Allenberry's books and in those of D.C.P.M., with a view to divert a net profit of Rs. 14,97,347 to D.C.P.M. The same procedure was adopted in the case of the Rs. 52,00,000. To all intents and purposes the two frauds were perpetrated side by side.

As we saw, when dealing with the 2323 vehicles, H. D. Bishnoi at Dalmianagar seems to have been pressing for a statement of account from Delhi and Delhi was not able to give it, so Shital Prasad wrote apologetically from Delhi on 25-5-48 (Ex. 363/394) and said,

"You will appreciate that I cannot get any statement prepared or proceed in the matter here because all relative affairs are at Calcutta."

The letter also speaks of a certain "entry" and about certain "hints" that were made to Shant Prasad Jain. As we do not know what Shital Prasad Jain is referring to we will content ourselves with reproducing what he said,

"I had myself written in my letter to Syt. S. P. Jain under reply to you, the something what you have understood from Mr. Raj Kumar Lal and presumed. I am sure you must be remembering the circumstances of the *entry*, as also *hinted* in my letter to S. P. Jain when it was agreed that Allenberry will continue to do extraction and selling work as a contractor and/or agent and after the close of the year the profits will be examined and allocated between the two. For that very reason I had written in the matter to Syt. S. P. Jain with copy to you."

So far as the entry that he speaks of is concerned it seems to refer to the Rs. 52,00,000 we are now examining and the Rs. 47,19,800 which was the supposed "cost" of the 2323 vehicles that are said to have been sold to D.C.P.M. on the same date. The two together total Rs. 99,19,800, and that is the figure mentioned in the next document (Ex. 363/393), a letter dated 15-6-48 from H. D. Bishnoi at Dalmianagar to Shanti Prasad Jain. He says,

"an entry was made in the D.C.P.M. books in Dalmianagar branch of 28-2-47 for Rs. 99,19,800 being *cost of pipelines and fittings purchased from Allenberry*. These goods are being sold by Allenberry but we have not got any account statement from them and therefore no entry could be made in D.C.P.M. books.

As D.C.P.M. books are to be closed shortly I would request you kindly to direct Allenberry, Calcutta to send the relative statements and *also let me know if we have to give any percentage of commission to Allenberry for the sale.*"

A copy of this letter was sent to R. Dalmia on 19-6-48 (Ex. 363/392) and he was asked to forward the necessary instructions to H. D. Bishnoi.

The letter indicates that though the pipelines and fittings are supposed to have been sold to D.C.P.M. there was some sort of "agreement" (which has not been produced) that Allenberry should continue to do the work of excavation and extraction and selling. It is also clear that Allenberry continued to sell the materials as before, but even as late as 19-6-48 it was not known whether Allenberry was to receive any commission for the sales made as "agent and/or contractor". So Shanti Prasad Jain was asked to settle the matter and forward the necessary instructions.

A few days later, 23-6-48, Shital Prasad Jain wrote to Chatterjee (Allenberry's accountant in the Drums and Pipelines section) and asked when he (Shital Prasad) would receive the Drums and Pipelines accounts for the half-year ending 31-12-47 (Ex. 749).

Shital Prasad Jain pointed out in this letter that the pipeline work had been sold by Allenberry to D.C.P.M. and that after that Allenberry was acting as D.C.P.M.'s contractors and/or agents, and said that Allenberry's workings had to be accounted for in part in D.C.P.M.'s accounts.

The statement of account was sent in a letter (Ex. 750) dated 8-3-49. It included the Trial Balances, Balance Sheet, Profit and Loss Account and Trading Account. None of these documents reflected the supposed sale of 28-2-47 and they all expressly included the Drums and Pipelines as part of Allenberry's stock.

Shital Prasad was also told that the auditor (Mirza M. Hossain) wanted Chatterjee to submit the first half-year accounts of 1948 along with the Balance Sheet within 12 days if possible so that he could submit one consolidated return to the Income Tax Officer in Pakistan. Shital Prasad Jain *knowing the importance of these documents, and knowing that that they would be audited and submitted to the Income Tax authorities took no exception to them.*

It is evident that Shital Prasad did receive this statement of account because he said in a letter (Ex. 756) dated 9-3-49 that he had received a statement in a letter dated 8-3-49. Shital Prasad said that he was enclosing a reconciliation statement made out in Delhi up to 8-3-49 on the basis of the statement received by him on 9-3-49.

There was a discrepancy of Rs. 24,18,000 between the two accounts. According to Shital Prasad this was due

had been reflected in either the Calcutta (Allenberry) or the Dalmianagar (D.C.P.M.) books.

The next letter that we have is (Ex. 754/22) dated 14-9-49. It is from Chatterjee in Calcutta to Delhi. He wrote :

"We note what you wrote about the entries of Pipeline and Fitting stocks, but we regret to write that *no written information had ever been sent to us about the transfer of property to Dalmia Cement and Paper Marketing Co.* It was only once that your Shital Prasad Jain casually mentioned that the property had been transferred to Dalmia Cement and Paper Marketing Co."

We do not know when this casual statement was made but it is clear that, whatever the transaction, it was anything but usual. Even if Delhi made the sale, Calcutta, which was doing the selling work and which was in physical possession of the stocks, should have been informed in writing with details to enable both Calcutta and Dalmianagar to reflect the transaction in the respective books of Allenberry and D.C.P.M.

Chatterjee goes on to explain that,

"When we prepared the final accounts of the Pakistan branches for the year ending 31-12-47, we had to show the total property, liability and assets *as desired by the Auditor and also the Income Tax Officer, Dacca* and their ground for this demand was that the Company had been registered in Pakistan and therefore the Balance Sheet should be produced."

Chatterjee concludes,

"We regret very much to write that when the *final* accounts for Pakistan were submitted to you, you had never objected and naturally we took it for granted that the accounts were approved by you."

So here again, as in the case of the 2323 vehicles, we have conclusive proof that the transfer was not reflected in the *final* accounts and that the balance sheet *approved by the auditors* was submitted to the Income Tax authorities and that Shital Prasad Jain knowing that this was to be done raised no objection.

The next letter in our possession is (Ex. 397-A) dated 23-2-50. Delhi writes to Calcutta as follows :

"It appears that during the month of January—February 1949 you have effected sales of pipeline fitting stock *belonging to D.C.P.M.* for value of little less than Rs. 7 lacs. Please note that Allenberry has credited to D.C.P.M. a sum of Rs. 3,50,000 to your debit and Debit Advice therefor is enclosed herewith for your responding the entry in your books to our credit."

After this we find that Allenberry sold the Pipelines and Fittings stocks in India and Pakistan to the following parties on 30-6-50, 8-7-50 and 10-8-50 (Exs. 775 and 346 & 775A) :

On 21-6-50 Stocks in India to American Pipe Co.	..	Rs. 12,60,300
On 10-8-50 Stocks in Pakistan to Chedi Agha for	..	Rs. 6,05,000

The agreements with the American Pipe Co. were dated 30-6-50 and 8-7-50 (Exs. 775 and 775A). *In all these cases Allenberry was shown as the vendor and the owner of the property.*

These inconsistencies in the accounts naturally caused confusion and Delhi began to blame Calcutta. B. N. Kanagat wrote from Delhi on 19-9-51 (Ex. 762) and said,

1. "We have asked you to submit Balance Sheets and Profit and Loss Accounts of Pakistan branches for the above half year *according to the books maintained by you.*"
 2. "It is not understood how in the statements of accounts as on 30-6-47 and 31-12-47 huge amount has been shown as Opening Stock and Closing Stock of Pipelines and Fittings as it has never been debited to your account and in fact does not appear in your books at all. Your attention is therefore invited to our letter dated 24-7-51.....*You have to prepare accounts according to the instructions given therein.*"
- * * * *
4. "Similar remarks apply to accounts for the year 1946. You should only take such items as appear in *your books.*"

What was happening all round is clear. In the case of the 2323 vehicles we found the Calcutta accountant writing to Delhi (Ex. 268/20) on 3-5-51,

"We can, if you so desire, manipulate and get this tallied with the figures appearing in its joint account."

We find D. N. Banerjee using the same language in the Drum and Pipeline section (Ex. 413-A).

"Thus for the two statements.....I am at a loss to understand as how to reconcile this difference. For making a correct statement keeping in view that the closing stock figure as shown in the previous years (i.e. from 1946 to 1950) should be kept as such *we are to manipulate* in the year.....so that we may arrive at a conclusion first."

It is true that this letter does not refer to the Pipelines but it is from the same office and shows what was going on. It cannot be accidental that the Disposal vehicles section and the Drum and Pipeline section should *both* state in letters that manipulations would be necessary if Delhi's directions were to be carried out.

Anyway, it is evident that even as late as April 1953 the sale of 28-2-47 had not been entered in the accounts. R. P. Gurha drew up a note (Ex. 739/9) on 4-4-53 about this supposed sale. This note was sent to Calcutta; and Banerjee in Calcutta wrote Delhi on 15-4-53 and asked for clarification. (Ex. 739/8). He made the following pertinent observations :

1. "If all the stocks were sold to D.C.P.M. *how is it that Allenberry could continue to sell in their own name.*"
2. "The dates of the transaction : when this sale was effected and when the goods were repurchased from D.C.P.M. are necessary."
3. "From the Income Tax point of view the question arises that we have done this in order to partially transfer the profit to some other party and also to inflate our stock figure."
4. "D.C.P.M. have not certainly sold any goods after they have purchased them from Allenberry and *Allenberry have made their own bills* for the goods sold by them though they have already sold the goods beforehand."

Now it will be remembered that this is exactly what happened in the case of the 2323 vehicles. How could *two departments* of Allenberry with separate accountants and separate personnel make exactly the same kind of mistake in transactions that, in this case extended to Rs. 52 lacs, and in the other to over Rs. 1 crore, and make them on the same day?

R. P. Gurha sent Banerjee the clarification on 20-4-53 (Ex. 739, p. 7). His explanations were,

1. "Although the stocks were sold by Allenberry to D.C.P.M. they were lying in the possession of Allenberry with the *understanding* that sales from time to time will be effected by Allenberry and D.C.P.M. will bill Allenberry for the stocks at *close of every year*."
2. "The date of transactions of sale by Allenberry to D.C.P.M. is already given in my previous note. The dates of *repurchases from D.C.P.M. by Allenberry* are 31st December and 28th February of every year."
3. "Regarding income-tax point of view the matter may be discussed with Syt. R. Sharma."
4. "*D.C.P.M. have sold these stocks to Allenberry itself year to year* and as explained in item I Allenberry have made the bills for sale of the stocks purchased by them from D.C.P.M."

It will be noticed that the letter (Exs. 363/393 & 394) sent to Shanti Prasad Jain on 15-6-48 speaks about some "agreement" (not produced) between D.C.P.M. and Allenberry about the continued sale by Allenberry on behalf of D.C.P.M. of the stocks that are supposed to have been sold to D.C.P.M. on 28-2-47. In the letter that we have just considered (Ex. 739) the "agreement" has become an "understanding". Can transactions amounting to Rs. 52 lacs in this case and to over Rs. 1 crore really have been conducted in this casual way? In any event this is a queer way of doing business. First of all Allenberry sells the stocks to D.C.P.M. and thus parts with the ownership in the goods. Despite that Allenberry continues to sell the goods to third parties in *its own name as owner*. After this, Allenberry is fictionally re-invested with ownership with retrospective effect by mere book entries made at the close of every year. This is done in order to vest Allenberry with ownership with retrospective effect and so vest it with the right to sell the goods on behalf of D.C.P.M. in its own name!

In any case we have here the admission that Allenberry dictated the figures for D.C.P.M.'s alleged sales to Allenberry on the basis of its own sales, and then D.C.P.M. adopted the "cost" of these sales in its own hands at a definite percentage of the sales.

The only ones who are in a position to know about this transaction are Allenberry, D.C.P.M. and those who were in charge at the time.

The directors of Allenberry and D.C.P.M. are the same as in the case of the 2323 vehicles and the position taken up by them and by Allenberry and D.C.P.M. follow the same lines as there. There is no need therefore to repeat here what they said there.

We have no doubt that the entries were fraudulently manipulated in this case just as they were in the case of the 2323 vehicles and that the accounts were ante-dated. On the evidence that we have examined above we are not able to believe that the transaction was *bona fide*.

CHAPTER II

UNDER-STATEMENT OF SALES OF STEEL SHEETS

By Contract No. 584 (Ex. 402A) of 19th February 1946 and by Contract No. 583 (Ex. 402) of 21st February, 1946, Allenberry purchased from the U.S. Army authorities the following :—

	Rs.
Con. 584 Stock of Steel Sheets, Drums & Drum Manufacturing Plants ..	23,15,000
Con. 583 Pipe Line & Fittings	32,00,000
	<u>55,15,000</u>
Customs Duty paid thereon by Allenberry	9,24,455
	<u>64,39,455</u>
Less: Cost allocated to Drum Manufacturing Plants (including customs duty) and capitalised	2,37,954
	<u>62,01,501</u>

2. The total quantity of Steel Sheets in approximate number of units has been mentioned in Con. 548 as under :—

	Condition Unit	Approx. No. of Unit
1. Steel Sheet, 36 $\frac{3}{8}$ " × 71 $\frac{1}{2}$ " 16 gauge, hot rolled ..	New Sht.	437,619
2. Steel Sheet 26 $\frac{1}{2}$ " × 79 $\frac{1}{2}$ " 16 gauge, hot rolled ..	New Sht.	181,510
3. Steel Sheet, 24" × 72" 12 gauge, hot rolled ..	New Sht.	572,979

Rs. 354 per ton. From these particulars it would appear that the total quantity of the sheets purchased was at least 12,701 tons as below :—

Size of the Sheets	Sales between 22-7-46 and 9-8-46		Average Selling price per ton in August 1946	Weight per sheet (Qrts)	Total No. of Sheets bought as per contract note	Total weight of sheets bought (Tons)
	No. of Sheets	Sale Price				
		Rs.	Rs.			
(72" × 36") 16 G ..	10	72/-	354/-	1.60	437,619	8,901
(80½" × 26½") 16 G	16	82/8-	354/-	1.17	181,510	2,644
(70½" × 21½") 12G	336	237/8-	354/-	0.16	579,979	1,156
TOTAL TONS						12,701

6. The Company has, however, shown a different tonnage and value of the steel sheets in their statement allocating the purchase price (Ex. 757) of the cost of the pipelines and fitting stock as per statement sent by them to the Head Office in Dalmianagar in May, 1946. The relevant abstract as per Ex. 757 is as follows :—

	Rs.
Sheets 5,000 tons at Rs. 140/-per ton	7,00,000
Drums 200,000 at Re. 1/-each	2,00,000
TOTAL	9,00,000

7. The company maintained the figure of 5,000 tons and the valuation of Rs. 9 lakhs including the value of drums in their subsequent statements of closing stocks on 30th June, 1946 and 31st December, 1946 (Exs. 758) and 759). Thus, the value of Rs. 9 lakhs was maintained for 5,000 tons only against the total purchase of 13,106 tons for Rs. 29 lakhs, the balance of Rs. 22,00,000 being allotted to the pipeline and other items. It may, however, be explained that the total purchase price mentioned in para (1) above amounting to Rs. 62,01,501-9-0 was maintained in the aggregate for 'cost' purposes, and whereas there was a reduction in the value of the sheets and drums there was a corresponding increase in the value of other articles, mainly in the pipelines which was taken at Rs. 44,50,000 in the aforesaid total of Rs. 62,01,501-9-0. In other words, the purchase price eventually to be charged to the cost of sales remained at the same figure but a reallocation was made by the company.

8. It is not denied that 5,000 tons of steel sheets were taken into account as stock-in-trade, but it has been sought to be explained to us by Mr. C. C. Shah for Shanti Prasad Jain that the value of Rs. 9 lakhs which includes Rs. 2,00,000 for 200,000 drums makes up the difference of approximately 8,000 tons. However, this theory cannot hold water because by reference to contract note No. 584 (Ex. 402A) it is abundantly clear that item numbered (11) in Article I of the agreement shows the approximate number of new drums at 20,913. Therefore, the obvious conclusion is that the 20,913 drums were purchased in addition to 13,106 tons of steel sheets.

9. It, therefore, follows that the total quantity of steel sheets kept by Allenberry *outside of its books* in the half year ended 30th June 1946, and onwards was 8,106 tons as follows :—

									Tons
Total purchases	..	..	..	..	..	..	..	..	13,106
Accounted for in the books	..	..	..	..	..	..	..	..	5,000
Balance	..	..	..	..	..	..	..	..	8,106

and Allenberry dealt in these secreted stock of steel sheets outside its books of account with a view to understating the profits.

10. In the absence of any accounts and records for the company's transactions in the secreted stock of steel sheets, the true extent of the understatement of sales of Allenberry can only be based on the sales made by it out of the stock of 5,000 tons taken on the books. This has been done by adopting a proportionate amount of the sale value of the entire 13,106 tons of sheets in the three sizes, by applying a selling rate per sheet of each type as per paragraph 5 above. This yields an understatement of at least Rs. 27,81,201, as follows :—

Size of the Sheets	Total No. of Sheets bought	Selling rate per sheet (Vide particulars in Para 5)	Total sale value
(72" × 36") 16 G	437,619	$72 \times \frac{1}{10}$	31,50,557
(80½" × 26½") 16 G	181,510	$\frac{165}{2} \times \frac{1}{16}$	9,35,911
(70½" × 21½") 12 G	579,979	$\frac{475}{2} \times \frac{1}{336}$	4,02,955
TOTAL No.	11,99,108	(i.e. 13,106 tons)	44,96,723
Sale value of 8,106 Tons is $\frac{44,96,723 \times 8,106}{13,106}$			
i.e. Rs. 27,81,202			



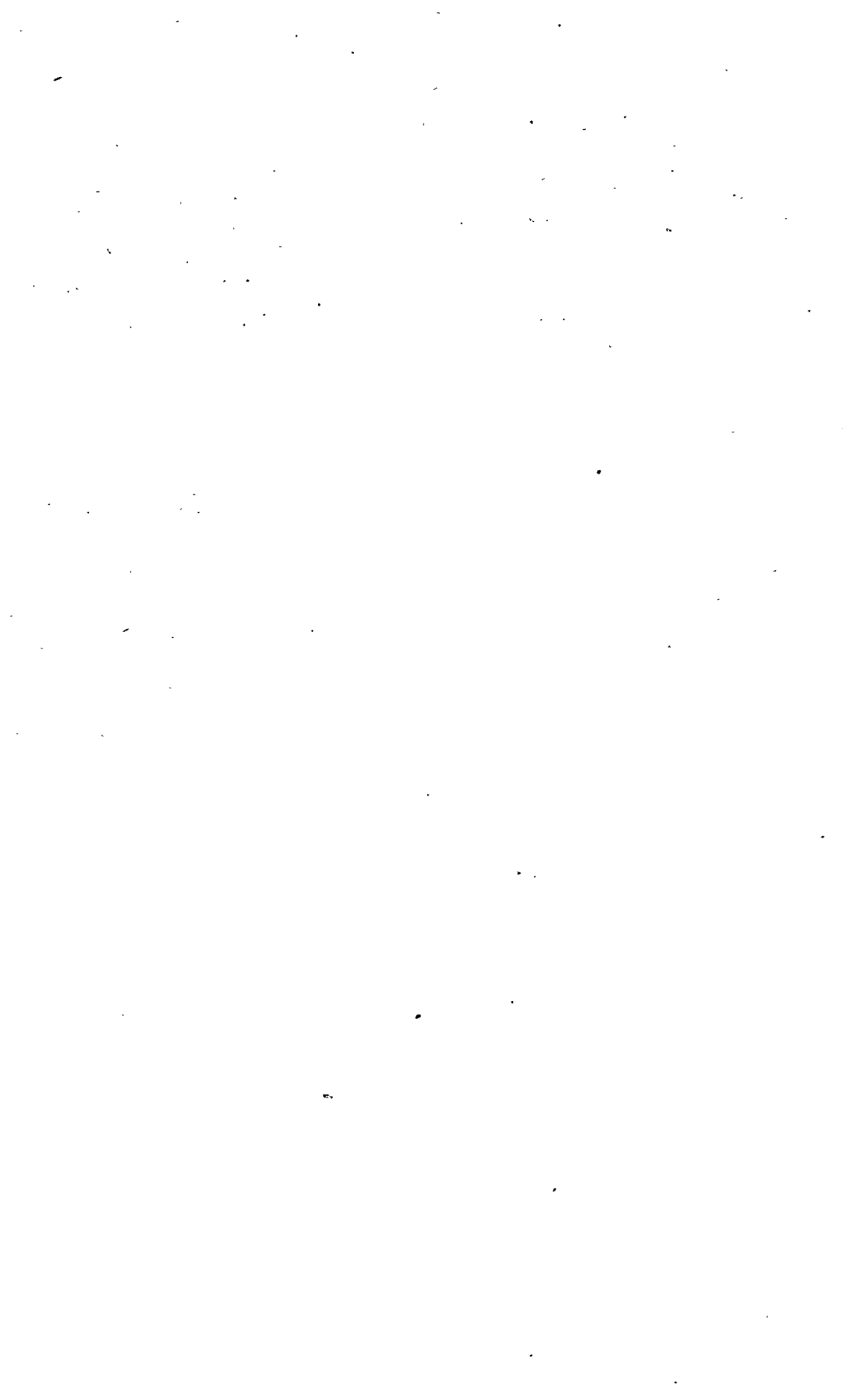
PART 4

INTER-COMPANY INVESTMENT
AND TRANSFERS



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CHAPTER I

INTRODUCTORY

After the termination of the joint venture R. Dalmia exploited the funds of the public company, D. J. Airways for the benefit of the concerns under his control to the detriment of the shareholders of D. J. Airways. We will first examine certain inter-company investments and an inter-company transfer. We will start with a sum of Rs. 75,25,000 that D. J. A. subscribed for certain D. J. Aviation shares on 21-12-48 and 7-2-49. But before we come to that it will be necessary to say a word about D. J. Aviation.



CHAPTER II

D. J. AVIATION

D. J. Aviation was a new company that was incorporated on 11-3-48. An application to the Controller of Capital Issues dated 13-10-47 (Ex. 133), signed by J. M. Gupta, says that the company was being formed :

"in deference to the instructions of the Air Transport Board, Government of India, New Delhi, who want us to reconstitute the present set up of the Dalmia Jain Airways Ltd. by floating this separate company exclusively for taking over its air section."

The formation of this company followed the pattern set in the case of D. J. Airways. First, the real promoter R. Dalmia, kept in the background and put forward a set of dummies. The persons named in the memorandum of Association (Ex. 132) are M. P. Modi, V. H. Dalmia, Kailash Chander, Shadi Lal Saluja, L. N. Pathak, J. M. Gupta and S. L. Verma.

Next, D. J. Aviation was supposedly formed for taking over the air business of D. J. Airways, but in fact it never did any air business. We examined three of the directors, J. M. Gupta, P. S. Patke and G. Ramachandran, and this is all that they could tell us :—

J. M. Gupta (W. 4) and P. S. Patke (W. 7) said that R. Dalmia controlled the company though he was not a director. J. M. Gupta said that he (J. M. Gupta) was a director with the consent of R. Dalmia, that he was not independent and that he surrendered his judgment to him and that he worked under him. He added,

"The Board of Directors took their instructions from R. Dalmia as communicated through M. R. Jain and S. L. Verma."

P. S. Patke said that he was a nominee director and acted as the nominee of R. Dalmia and that

"For every meeting I used to take specific instructions from R. Dalmia;"

also that he was only a "dummy and a glorified messenger".

G. Ramachandran said much the same thing. He said that at no time did he exercise an independent judgment and that his only duty was to attend the Board meetings.

Coming to the business that D. J. Aviation did, J. M. Gupta said that as far as he remembered it never did any aviation business and P. S. Patke admitted that no part of the money of D. J. Aviation was used for the purposes set out in the application Ex. 133 A.

So, that gives an idea of the kind of company that D. J. Aviation was. It was the second Airways company floated within a space of three years for the express purpose of doing aviation business but never doing any.

The name initially proposed for this company was "Dalmia Jain Air Ltd.". This was changed to "Dalmia Jain Aviation Ltd." and then changed to "Asia Udyog". Here again we find a pattern : the continual change of names in order to confuse and conceal the real identity of the companies and also to be able to defeat and thwart investigation. As soon as papers of a particular company are wanted the identity is changed and the papers are handed on to the newly formed company which either destroys them or resists production on the ground that it is not the company to whom the demand for production has been issued.

D. J. Aviation was originally floated as a public limited company but was converted into a private company on 26-4-52 (Ex. 56/17 and 223/6). Incidentally, this was just ten days after D.C.P.M. had similarly been changed from a public into a private limited company (Ex. 220); nor was this just coincidence. But of that later.

CHAPTER III

INVESTMENT OF Rs. 75,25,000 IN D. J. AVIATION SHARES

We will now come to the matters that led up to the investment of Rs. 75,25,000 in D. J. Aviation shares and will show that it was part of a process of milking away the assets of D. J. Airways before dissolving it.

The first step in the process was the formation of D. J. Aviation. On 13-10-47 D. J. Aviation made an application to the Controller of Capital Issues (Ex. 133 A) stating that,

- (1) D. J. Aviation would take over the aviation assets of D. J. Airways to the extent of Rs. 42 lacs; and
- (2) in return, D. J. Airways would get Rs. 40 lacs worth of D. J. Aviation shares.

After this was done the joint venture was terminated on 30-6-48.

Under the agreement (Ex. 37) the entire stock of joint venture vehicles held by D. J. Airways was transferred to Allenberry "at cost" for Rs. 2,85,66,250. Allenberry did not pay in cash and no security was taken from it. All that Allenberry gave was a bare promise (which was not honoured) to repay D. J. Airways with interest by instalments as follows:

1st Instalment on 30-6-49	.. .. .	Rs. 1 crore
2nd Instalment on 30-6-50	.. .. .	Rs. 1 crore
3rd by 30-6-1951	.. .. .	for the balance

This meant that Allenberry would have had to pay D. J. Airways Rs. 1 crore on 30-6-49. In order to reduce this liability without paying anything and in order to disguise the fact that Allenberry intended to default, the following steps were taken:

On 21-12-48 D. J. Airways was made to subscribe for 7,500 ordinary and 250 preference shares of D. J. Aviation worth Rs. 1 lac. There were allotted to the various nominees of D. J. Airways set out in Ex. 56/4. Only Rs. 10,000 was paid in cash (Ex. 136). The balance of Rs. 90,000 was credited to D. J. Aviation's account in D. J. Airways' books and debited to D. J. Airways' account in the books of D. J. Aviation (Ex. 41). This was on 5-2-49.

On the same date the next step regarding Allenberry's indebtedness was also taken. The instalment of Rs. 1 crore that was to fall due on 30-6-49 was shown in D. J. Airways' books as having been satisfied to the extent of Rs. 60 lacs on 5-2-49. This was done by book adjustments. (Ex. 26/11 and Ex. 26/12).

The adjustments were made as follows: Rs. 60 lacs was transferred from the account of Allenberry in the books of D. J. Airways to the account of D.C.P.M. in the same books.

This transfer had the effect of reducing on paper Allenberry's liability to D. J. Airways by Rs. 60 lacs and increasing D.C.P.M.'s liability to D.J.

Airways by the same amount. In other words, a sound debtor with sound assets from which this Rs. 60 lacs could have been recovered was released from its obligation to that extent and a "man of straw" (D.C.P.M.) was substituted as the debtor in its place. D.C.P.M. was not in a position to pay and the transaction lacked good faith.

Now that Allenberry was saved to the extent of the Rs. 60 lacs steps were next taken to have D.C.P.M. wipe out this obligation that it had taken over from Allenberry. This was done by further manipulations and adjustments.

On 7-2-49, two days after the juggling with the Rs. 60 lacs and after the debit for Rs. 90,000 was made in the books of D. J. Aviation (Ex. 41), D. J. Aviation allotted another set of shares valued at Rs. 74,25,000 to the nominees of D. J. Airways set out in Exs. 56/5, 40 & 43. This amount also was not paid in cash. The allotments were effected by means of credit and debit entries in the books of D. J. Airways and D. J. Aviation respectively.

On the date of this allotment D. J. Airways was already indebted to D. J. Aviation in the sum of Rs. 90,000. Therefore the allotment meant that D. J. Aviation was giving financial assistance to D. J. Airways to enable it to subscribe for D. J. Aviation shares—a thing that is not allowed under the Companies Act.

All these transactions caused a major reshuffle of D. J. Airway's accounts on 31-5-49 with consequent changes in the accounts of D.C.P.M. and D. J. Aviation. The position on that date was as follows :

1. D. J. Airways had subscribed for Rs. 1 lac worth of D. J. Aviation shares on 21-12-48. This investment was on credit except for a payment of Rs. 10,000 by cheque on 21-12-48.

D. J. Airways also subscribed for a further Rs. 74,25,000 worth of D. J. Aviation shares on 7-2-49. This was also on credit.

D. J. Airways thus owed D. J. Aviation Rs. 75,25,000 less the Rs. 10,000 for these shares on 31-5-49.

2. In order to settle D. J. Aviation's claim, D. J. Airways drew a *hundi* for Rs. 75,12,963-15-6 on D.C.P.M. in favour of D. J. Aviation. (The balance of Rs. 2,036-0-6 had already been adjusted as Preliminary Expenses.)

3. The books of D. J. Airways showed that D.C.P.M. owed D. J. Airways Rs. 52,31,862-4-8 on 31-5-49.

The effect of the *hundi* was to wipe out this debt and to turn D. J. Airways into a debtor of D.C.P.M. to the extent of Rs. 22,81,101-10-10.

To offset this D. J. Airways transferred Rs. 40 lacs worth of D. J. Aviation shares held by it to D.C.P.M.

This had the effect of again turning D.C.P.M. into a debtor of D. J. Airways, but this time only to the extent of Rs. 17,18,898-5-2 in place of the original Rs. 52,36,887-4-8.

It is to be noted that D. J. Aviation never cashed this *hundi*; also that only Rs. 10,000 out of the Rs. 1 crore capital of D. J. Aviation was received

by it in cash. The rest of the capital consisted of debit and credit entries of the kind that we have just seen.

By this device D.C.P.M. had its liability reduced without having to pay a pie either to D. J. Airways or to D. J. Aviation. All that happened was that by a book adjustment D.C.P.M. became a debtor to D. J. Airways in place of Allenberry to the extent of the Rs. 60 lacs.

The net result of these transactions can be summarised as follows.

1. D. J. Airways got Rs. 75,25,000 worth of D. J. Aviation shares for its nominees. (The Rs. 75,25,000 was later reduced to Rs. 35,25,000).

2. D. J. Airways paid for the shares with D.C.P.M.'s hundi which made D. J. Airways a debtor of D.C.P.M. to the extent of Rs. 22,81,101-10-10.

3. In return D. J. Airways transferred Rs. 40 lacs to D.C.P.M. in the shape of D. J. Aviation shares and D.C.P.M. thus again became indebted to D. J. Airways; but this time only to the extent of Rs. 17,18,898-5-2 instead of Rs. 52,36,887-4-8.

These complicated manoeuvres had to be effected before 30-6-49 (the date on which D. J. Airways' balance sheet had to be drawn up) in order that the shareholders of D. J. Airways could be told, (1) that Allenberry had paid a substantial part of the instalment of Rs. 1 crore due from it under the agreement and (2) that D.C.P.M.'s liability to D. J. Airways had been reduced by more than Rs. 35½ lacs.

The object of all this was,

1. To show a reduced indebtedness of Allenberry in the books of D. J. Airways as on 30-6-49 and to show that it had paid a substantial part of the instalment of Rs. 1 crore due from it.

2. To reduce D.C.P.M.'s liability to D. J. Airways on paper in such a way that it would not have to pay a pie in cash either to D. J. Airways or to D. J. Aviation; and at the same time to show the shareholders of D.J. Airways that D.C.P.M.'s liability of Rs. 52 lacs odd had been reduced by over Rs. 35½ lacs.

3. To reduce D. J. Airways' shareholding in D. J. Aviation to Rs. 40 lacs at which the latter would have become a subsidiary of the other. The reason for this was that if D. J. Aviation was a subsidiary of D. J. Airways then D. J. Airways would have been obliged to attach the balance sheets of its subsidiary to its own balance sheet and that would have disclosed the true assets of the subsidiary to the shareholders of D. J. Airways.

The want of good faith in making these investments of Rs. 75,25,000 can now be appreciated. In addition to all that we have shown above the following facts will lend added force to that conclusion.

1. D. J. Airways bought 742,500 shares of D. J. Aviation on 7-2-49 and within 3 months namely on 31-5-49 transferred Rs. 40 lacs worth of them back to D.C.P.M. *at cost*.

D. J. Airways thus gained nothing by this deal while Allenberry and D.C.P.M. did.

2. D. J. Airways paid for these shares by drawing a hundi on D.C.P.M. which D. J. Aviation (in whose favour the hundi was drawn) never realised in cash. All that happened was that D.C.P.M. was shown as a debtor in D. J. Aviation's books. The result was that though D. J. Airways paid for the shares in one way and another, D. J. Aviation got no cash for them and the only gainers were Allenberry and D.C.P.M.

Nor can the investment be justified on any normal business ground, for the following reasons.

1. D. J. Aviation was a company floated for the express purpose of taking over D. J. Airways' aviation business at a time when it was known that that business in D. J. Airways' hands was a complete failure and was being run at a loss with no hope of revival.

2. It was also known that D. J. Aviation was not doing any aviation business and that there was never any intention that it should.

3. Only Rs. 10,000 had been received in cash out of its capital of Rs. 1 crore.

4. D. J. Aviation had no assets except the indebtedness of D.C.P.M. arising out of book entries made to create share capital; and D.C.P.M. was itself no better than a "man of straw".

5. D. J. Aviation was a new company with no prospects and no guarantee of dividends; and we find that it never paid any on its ordinary shares from its inception till 5-8-51, the date on which D. J. Airways is supposed to have parted with its shares to D.C.P.M. "at cost".

6. Even the re-sale to D.C.P.M. "at cost" is misleading because D.C.P.M. was to pay D. J. Airways in annual instalments spread over 17 years *without interest*, so the present value of the re-sale was reduced by 50 per cent and that meant that D. J. Airways really sold at a loss of about 50 per cent.

7. Then as regards the management of D. J. Aviation, that was in the hands of R. Dalmia. In any event the directors at that time were J. M. Gupta, Manmohanlal Raizada, P. S. Patke who knew nothing about aviation business, and M. L. Sodhani who did, took no part in the management. The business was managed by J. M. Gupta alone and he said that he signed whatever was put before him; also that D. J. Aviation's Board of Directors followed the directions of M. R. Jain in the administration of the company and that M. R. Jain worked under the instructions of R. Dalmia; in addition, P. S. Patke was R. Dalmia's secretary.

8. Then see the salaries that were paid. A business can be run by directors with no technical knowledge provided they have expert employees; but the total salaries paid to the employees in 1949, 1950 and 1951 were as under :

Paid up to	31-7-1949	Rs. 1,567	12	0	Ex. 45
	31-7-1950	Rs. 1,300	0	0	Ex. 46
	31-7-1951	Rs. 1,200	0	0	Ex. 47

It is obvious that a complicated business like aviation cannot be run by a staff whose *total* salaries per year are as above.

9. Then as regards marketability, these shares were not listed on any stock exchange and so were not readily marketable, which means that the money invested in them could not have been readily realised.

10. We also know that though D. J. Aviation was to have taken over the assets of D. J. Airways according to the application of 13-10-1947 (Ex. 133) it never did so and in the end handed over all its principal assets to D.C.P.M. 'at cost' and allowed D.C.P.M. to pay for them *without interest* by instalments ranging over 17 years, thus reducing the present value of the transfer by a good 50 per cent.

11. As regards the assets of D. J. Aviation, no less than 99 per cent of them consisted of the debit balance in its books against D.C.P.M. Therefore, when D. J. Airways acquired these D. J. Aviation shares the object and result were to allow D.C.P.M. the continued use of funds that should have been refunded to D. J. Airways; and R. Dalmia knew and intended this.

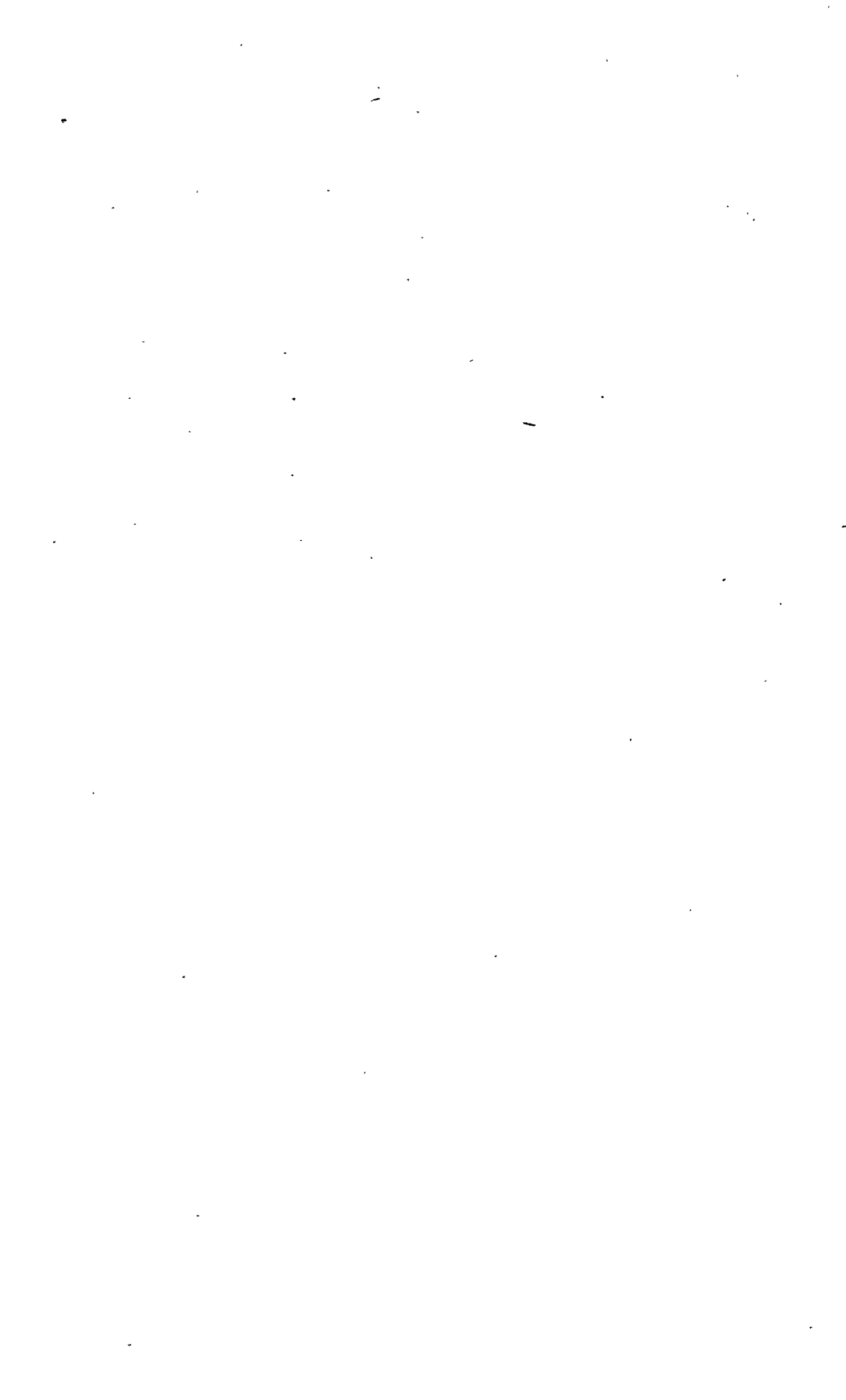
12. Another factor that indicates want of good faith is that though D. J. Airways subscribed for these shares and was the real beneficiary *they were not registered in its name*. They were registered in the names of 13 benami shareholders (Ex. 56). These registered shareholders were all nominees. They did not pay for the shares and held them under blank transfer deeds.

13. D. J. Airways made no use of these shares. All they did was to hold them for 2 years and then transfer them back to D.C.P.M. at the same rate at which they had been bought.

All these manoeuvres resulted in a loss of Rs. 3,41,250 to the shareholders of D. J. Airways as follows,

First, D. J. Airways lost interest on Rs. 35,25,000 from 31-5-1949 to 5-8-1951.

Then on 5-8-1951 the shares were transferred to D.C.P.M. under the agreement Ex. 5 and D.C.P.M. undertook to pay D. J. Airways Rs. 35 lacs for them. But the money was to be repaid *without interest* in annual instalments spread over 17 years, the first of which was to be paid in 1956 (that is 5 years hence). A simple calculation will show that the loss of interest at 4½ per cent from 31-5-1949 to 31-7-1951 on Rs. 35,25,000 comes to Rs. 3,41,250.



CHAPTER IV

INVESTMENTS IN SHARES

(a) S. S. B. Mills, (b) M. D. M. Co., & (c) Jaipur Udyog.

The next set of inter-company investments that we shall examine are-

- (1) Rs. 43,60,000 in S. S. B. Mills shares on 23-3-1950.
- (2) Rs. 21,60,000 in M. D. M. Co. shares on 23-3-1950.
- (3) Rs. 74,00,000 in Jaipur Udyog shares on 30-6-1950.

As in the previous case, these are also connected with Allenberry's indebtedness to D. J. Airways under the agreement Ex. 47 dated 11-6-1948. As we have seen, Allenberry was not able to pay D. J. Airways the Rs. 2,85,66,250 for the stock that it took over from D. J. Airways on the termination of the joint venture, and so said it would pay by instalments. It defaulted on the very first instalment, but by juggling with the accounts it was made to appear in D. J. Airways balance sheet as at 30-6-1949, that Rs. 60 lacs of the Rupees one crore due on 30-6-1949 had been repaid. But even that left a balance of Rs. 40 lacs that had to be accounted for in the balance sheet of the following year; and in any case provision had to be made for the second instalment of Rs. 1 crore that was due on 30-6-1950.

In addition to this, both Allenberry and D.C.P.M. owed D. J. Airways large sums for interest Rs. 13,94,699 and D.C.P.M. had a large debit balance of Rs. 53,87,956 outstanding in the books of D. J. Airways. In order to cover up all this the following things were done.

We will first point out that the accounting year of D.C.P.M. ended on the 28th February, that of D. J. Airways on the 30th of June and that of Allenberry on the 31st December.

On 1-7-1949, the opening day of the accounting year of D. J. Airways the following amounts were due to it.

- | | | |
|-------------------|---------------------|-----------|
| (a) By D.C.P.M. | Rs. 15,44,214-2-9 | Ex. 26/16 |
| (b) By Allenberry | Rs. 2,47,19,662-0-2 | Ex. 26/16 |

Allenberry's indebtedness included the balance of Rs. 40 lacs due under the 1st instalment of Rs. 1 crore that should have been paid on 30-6-1949 under Ex. 37 but of which only Rs. 60 lacs were shown as having been repaid.

R. Dalmia wanted to show that Allenberry had paid this Rs. 40 lacs. Accordingly he got Rs. 30 lacs transferred from Allenberry's account in D. J. Airways books to the account of D.C.P.M. on 14-7-1949, and a further Rs. 10 lacs on 30-7-1949 (Ex. 26/16).

This wiped out Allenberry's liability *on paper* for the Rs. 40 lacs and showed the first instalment as fully repaid. But all that really happened, so far as D. J. Airways was concerned, was that one debtor with good assets was substituted for another with insufficient assets. But *on paper*

the position was that on 27-2-1950 (the day before D.C.P.M.'s accounting year closed) the books of D. J. Airways showed,

- (a) that Allenberry's liability to D. J. Airways was reduced from Rs. 2,47,19,642-0-2 to Rs. 2,07,28,342;
- (b) that the balance of Rs. 40 lacs due under the first instalment of Rs. 1 crore was fully paid up; and
- (c) that D.C.P.M.'s indebtedness to D. J. Airways had increased from Rs. 15,44,214-2-9 to Rs. 53,87,956-3-10.

The last day of D.C.P.M.'s accounting year was approaching. There was only one day to go and interest had to be accounted for. So the following entries on account of interest were made in the books of D. J. Airways on 28-2-1950.

- (a) Rs. 13,01,035-15-1 was debited against Allenberry; and
- (b) Rs. 93,663-7-6 against D.C.P.M.

Both sums were on account of the interest due from July 1948 to June 1949 (Ex. 26/16).

On the same day (28-2-1950) Allenberry's liability for the interest (Rs. 13,01,035-15-1) was at once transferred to D.C.P.M.

This again has the effect of showing that Allenberry's account in this respect had been cleared of and of increasing the sum due from D.C.P.M. to Rs. 67,82,655-12-5.

The total indebtedness of D.C.P.M. on this date was nearly Rs. 6 crores while its paid-up capital was only Rs. 50 lacs. The want of good faith in transferring Allenberry's liabilities to a company of this kind whenever it was convenient to clear Allenberry of a part of its indebtedness is at once apparent.

Now R. Dalmia did not want to disclose to the shareholders of D. J. Airways that one of its concerns, already heavily in debt, was taking on added responsibilities in order to relieve a sister concern of its indebtedness; nor did he want to disclose that the indebtedness of D.C.P.M. had risen to such alarming large proportions. He, therefore, resorted to more juggling.

On 23-3-1950 D. J. Airways was made to buy from D.C.P.M. Rs. 43,60,000 worth of S. S. B. Mills shares and Rs. 21,60,000 worth of M. D. M. shares (Ex. 26/16). This reduced D.C.P.M.'s liability to D. J. Airways to Rs. 2,62,655-12-5. But though these shares were shown to have been purchased by D. J. Airways they were not registered in its name.

As a result of this manoeuvre the directors of D. J. Airways were able to show its shareholders.

- (a) an investment of Rs. 65,20,000 in good shares; and
- (b) a much reduced liability of D.C.P.M. to D. J. Airways.

Now it is to be noticed that this investment was made after 28-2-1950. There was a reason for this. At this date D.C.P.M. was still a public company and so R. Dalmia did not want to disclose to the shareholders and to the Registrar of Companies that D.C.P.M. had parted with such valuable securities. Therefore, the transfer was made on 23-3-1950 so that it would not be reflected in D.C.P.M.'s balance sheet as at 28-2-1950;

on the other hand the shareholders of D. J. Airways were shown these valuable shares in the balance sheet of D. J. Airways at 30-6-1950.

But as soon as that purpose was served the shares were given back to D.C.P.M. on 28-2-1951 *for the same price*, and the entries in the books of D. J. Airways were simply reversed.

Now see what this juggling accomplished.

1. These shares appeared as the property of D.C.P.M. in its balance sheet as at 28-2-1950.
2. They then appeared as the property of D. J. Airways in the balance sheet of D. J. Airways as at 30-6-1950.
3. Eleven months later they re-appeared as the property of D.C.P.M. in its balance sheet as at 28-2-1951; and, so far as anyone studying the two balance sheets of D.C.P.M. was concerned, the shares had never left D.C.P.M. and D.C.P.M. had suffered no loss on their account.

Now D.C.P.M. did not pay for the shares so transferred in cash. All that happened was that a debit entry was made against it in the books of D. J. Airways; and right down to the liquidation of D. J. Airways this money was never recovered from D.C.P.M.

The re-transfer naturally had the effect of resorting D.C.P.M.'s indebtedness to D. J. Airways to its original figure Rs. 67,82,655-12-5. That was the position on 23-3-50. Now the accounting year of D. J. Airways ended on 30-6-1950 and the second instalment of Rs. 1 crore due from Allenberry under Ex. 37 fell due on that date; also Allenberry had to pay interest on this at $4\frac{1}{2}\%$. So steps were taken, as in the previous year, to minimise this liability. On 29-6-1950, one day before the close of D. J. Airway's financial year, a sum of Rs. 74 lacs was transferred from Allenberry's account in D. J. Airways books to the account of D.C.P.M.

This was the same old game. This time the design was,

- (a) to relieve Allenberry of its liability to D. J. Airways to the extent of Rs. 74 lacs;
- (b) to relieve Allenberry of its liability to pay interest at $4\frac{1}{2}\%$ on these Rs. 74 lacs; and
- (c) to make it appear that Allenberry was honouring its obligation regarding the second instalment to the extent of Rs. 74 lacs.

But this, of course, also increased the liability of D.C.P.M. to D. J. Airways by Rs. 74 lacs, so the next step was to wipe this out and to do it before the close of D. J. Airways' financial year. This was done as follows.

D. J. Airways acquired Rs. 74 lacs worth of Jaipur Udyog shares on 30-6-1950 (the last day of D. J. Airways financial year) and it paid for the acquisition by drawing a hundi on D.C.P.M. for Rs. 74 lacs. This manoeuvre naturally wiped out D.C.P.M.'s obligation regarding the Rs. 74 lacs that it had taken over on that day from Allenberry. At the same time it showed the shareholders of D. J. Airways that D. J. Airways had a nice bundle of Jaipur Udyog shares among its assets.

But here again, the bank account of D.C.P.M. shows that D.C.P.M. never satisfied this hundi in cash.



CHAPTER V

NO GOOD FAITH

We will now examine the want of good faith in these investments. Looking first at the acquisitions of the S.S.B. Mills and M.D.M. Co. shares we have already pointed out that on 28-2-51, only 11 months after the acquisition, the entries were simply reversed so that D. J. Airways neither lost nor gained by the purchase and re-sale. But we also found that the shares were never registered in the name of D. J. Airways; and there was a further fact that D.C.P.M. did not pay the consideration for the re-transfer in cash; nor was the sale price ever recovered from D.C.P.M. right up to the date of the liquidation of D. J. Airways. The purchase price was not secured and D.C.P.M. was given time to pay in four annual instalments beginning from October 1952. But the most damaging fact is that these were good investments and so there was no justification for the return of the shares. On 30-6-51, after the shares had been given back to D.C.P.M., they are shown to have paid a dividend of Rs. 3,26,000 which D.C.P.M. received. This gives a yield of 5% whereas the interest that D.C.P.M. promised to pay was only 4½%.

Those facts make it evident that the S.S.B. Mills and M.D.M. Co. shares were not acquired for *bona fide* investment purposes but for the other reasons that we have set out above.

Now turning to the purchase of the Rs. 74 lacs worth of Jaipur Udyog shares, this transaction also lacked good faith. In the first place, regarded as an investment it was not a sound one because a long-term investment was not the object in view. Jaipur Udyog was a private limited company controlled by R. Dalmia and its shares were not quoted on the stock exchange and so were not readily marketable. Also it was a newly started concern and its factory was still under construction, so it was not likely to pay dividends in the near future; nor in fact did it pay any during the time that D. J. Airways held the shares. They were acquired on 30-6-50 and then were passed on to D.C.P.M. on 5-8-51 *supposedly at the same rate*: another instance of a familiar pattern. As no dividend was paid, D. J. Airways lost Rs. 3,60,750 by way of interest at 4½% during these 13 months.

But another fact disclosing want of good faith is this. The Rs. 74 lacs that were expended in the purchase of the shares amounted to over 49% of the ordinary paid-up capital of Jaipur Udyog and to 33% of its entire paid-up capital. This would ordinarily have given D. J. Airways a right to have a nominee director on the board of Jaipur Udyog, but it was not given the right to nominate one. The shares stood all this time (over a year) in the names of either close relatives of R. Dalmia, or in the names of V. S. Chordia, P. L. Sah and F. L. Kothari, all of whom are employees of Dalmia concerns.

Then, when it came to a question of D.C.P.M. paying for the shares that it took over from D. J. Airways on 5-8-51, it did not pay for them at once but agreed to pay by instalments spread over 19 years *without interest*.

D. J. Airways thus not only lost the interest during the time it held the shares but also lost the interest on its Rs. 74 lacs for the next 19 years. That in itself reduced the present value of the Rs. 74 lacs by over 50%. Therefore, although the shares are supposed to have been transferred "at cost" they were really handed over to D.C.P.M at a loss of 50%. What possible justification can there be for deals of this kind?

These investments were made on 21-12-48, 7-2-49, 23-3-50 and 30-6-50. On the first two dates the directors of D. J. Airways were J. M. Gupta, Jagmohanlal Raizada and R. K. Jain; and the directors of the managing agents Dalmia Jain & Co. were Shanti Prasad Jain and J. Dalmia, with R. Dalmia as the attorney.

On the last two dates R. Dalmia was one of the directors of D. J. Airways. The rest of the directors were dummies. The managing agents were still Dalmia Jain and Co.

We will now turn to an Inter-Company Transfer of Rs. 2,44,25,417-1-0. Assets worth this sum were transferred from D. J. Airways to D.C.P.M. under an agreement (Ex. 5) that is dated 5-8-51 but which is in fact ante-dated. This was a collusive transaction between R. Dalmia and the directors of D.C.P.M., D. J. Airways and Allenberry to benefit D.C.P.M., Allenberry and R. Dalmia, at the expense of the shareholders of D. J. Airways who suffered a loss of Rs. 1,28,29,129 by the transaction and reduced the per cent worth of these assets, then worth Rs. 2,44,25,417-1-0, to less than half that figure.

As we have seen, by 30-6-51, Allenberry had defaulted in carrying out its obligations to D. J. Airways under the agreement Ex. 37 and on that date it owed D. J. Airways a sum of Rs. 1,35,25,417-1-0 (Ex. 5). This sum carried interest at 4½%.

D. J. Airways also held the following shares at that time.

(a) Jaipur Udyog : face value	.. .. .	Rs. 74,00,000
(b) D. J. Aviation	.. .. .	Rs. 72,00,000

The total value of these assets as on 30-6-51 was estimated at Rs. 2,44,25,417-1-0 in Ex. 5 dated 5-8-51.

In order to milk these assets away from D. J. Airways and relieve Allenberry and D.C.P.M. of their obligations to D. J. Airways, R. Dalmia resorted to the following device. He made D.C.P.M. enter into the agreement Ex. 5, the terms of which were as follows :

It first said that Allenberry was not able to pay D. J. Airways the Rs. 1,35,25,417-1-0 that Allenberry owed it.

It next set out the assets of D. J. Airways that we have referred to above and valued them at Rs. 2,44,25,417-1-0.

The third step was to transfer all these assets to D.C.P.M. for that figure.

But when it came to a matter of payment, D.C.P.M. was not to pay at once but in instalments spread over 19 years the first of which was not to fall for payment till October 1956, that is to say not till 5 years hence; and what is more important *this sum was not to carry any interest and no security was taken.*

Now it will be seen that under Ex. 37 Allenberry was supposed to pay interest at $4\frac{1}{2}\%$ and was given only 3 years in which to repay; which means that the entire amount was payable on 30-6-51. But this device relieved Allenberry of paying anything at all and deprived the shareholders of D. J. Airways of the interest that Allenberry would have had to pay; that is to say, even in the hands of D.C.P.M. half of Allenberry's debt was *in effect* wiped out.

But there was more to it than this. The assets set out above do not include the debt that D.C.P.M. owed D. J. Airways. D.C.P.M. owed D. J. Airways Rs. 99,53,000 and odd on that date and this sum carried interest at $4\frac{1}{2}\%$. So D.C.P.M. was given the privilege of paying this first, because it carried interest, and of paying the other debt, which did not carry interest, afterwards. The agreement was that D.C.P.M. was to be allowed to pay its own debt (Rs. 99,53,000) in four annual instalments from October 1952 to October 1956; and payment of the instalments in the other debt, freshly created, was not to commence till October 1956.

But even all this was just on paper and D.C.P.M. had no more intention of honouring this agreement than Allenberry had of honouring the agreement of 11-6-48 (Ex. 37).

At or about the date of Ex. 5, R. Dalmia held the following D.C.P.M. shares in his own name. We do not know the position on 5-8-51, but we have the details of his holdings on 30-11-51. They were as follows :

Preference	..	5,500	i.e. 22% of the whole
Ordinary	..	74,300	i.e. 37% of the whole
Deferred	..	3,59,000	i.e. 72% of the whole

In addition, Govan Brothers held 5,282 Preference shares, which is 22% of the whole; and, as R. Dalmia was the sole beneficiary in Govan Brothers at that time, it meant that he really held 44% of the Preference shares. Anyhow, his deep interest in D.C.P.M. is clear.

Eleven month after the agreement, D.C.P.M. was converted into a private limited company controlled by R. Dalmia; and within another 10 months D.C.P.M. was taken into voluntary liquidation on 19-2-53 and dissolved on 30-4-53. But just before this D. J. Airways was itself taken into voluntary liquidation.

But disregarding the fact that the agreement Ex. 5 was not carried out; even on the agreement as it stood, the shareholders lost at least Rs. 1,28,29,129. That sum is the discount on Rs. 2,44,417-1-0 at $4\frac{1}{2}\%$ payable in instalments spread over 19 years.

Now Rs. 128 lacs is 36% of the paid-up capital of D. J. Airways and is no mean loss.

Another factor that shows bad faith is that the shareholders of D. J. Airways were never told about the terms of Ex. 5 either by their directors or by the liquidator.

We also find that the treatment meted out to D. J. Airways by D.C.P.M. discriminated against D. J. Airways when we compare it with that accorded to Bennett Coleman & Co. and to L.E.S. Co.

Bennett Coleman owed D.C.P.M. a sum of Rs. 18,06,600 on 31-10-51. D.C.P.M. did not accept a mere promise to pay but took 18,066 Preference shares of D. J. Aviation against the debt. But when it came to settling up for the debt that D.C.P.M. owed D. J. Airways, instead of giving D. J. Airways something substantial it gave only airy unsecured promises.

In the case of L.E.S. Co., D.C.P.M. bought Rs. 30 lacs of Jaipur Udyog shares from D. J. Aviation on 22-11-50 and sold them the same day to L.E.S. Co. *at par*. But in the case of D. J. Airways the Rs. 74,40,000 worth of Jaipur Udyog shares were not transferred *at par* but at half their value because payment was spread over 19 years without interest. There was no deterioration in the value of the Jaipur Udyog shares in the interval to justify this discrimination.

This transfer is supposed to have been effected on 5-8-51. The Directors of D. J. Airways on this date were R. Dalmia and R. L. Chordia. Actually the document was executed later and was ante-dated but we will deal with that in another place.

PART 5
LIQUIDATION



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CHAPTER I

INTRODUCTORY

The matters that we have dealt with hitherto caused grave disquiet among the shareholders of D. J. Airways. This began to manifest itself early in 1949. Between 25-3-1949 and 20-11-51 there were a series of complaints about the way in which the affairs of D. J. Airways were being managed. These complaints are in the file marked Ex. 483. The most serious was that 90% of the capital of D. J. Airways amounting to Rs. 310 lacs had been advanced to Allenberry.

Complaints were also voiced at the third Annual General meeting of the Shareholders held on 30-3-1950 and a resolution was moved to the following effect (Ex. 285-C.),

"This meeting of the shareholders while passing the annual reports of D. J. Airways under protest directs the Directors of the Company that no further investment be made anywhere in any company out of sums of the company and one fourth of the shares be refunded to the shareholders out of the money to be recovered from Allenberry or invest it in government securities."

The Chairman of the meeting P. M. Mehta, ruled this out of order. One of the shareholders also suggested a change of auditors. In the end, the audited accounts and the Director's Report were passed with 2,10,265 votes in favour and 86,025 against, which shows that there was considerable dissatisfaction among the shareholders.

In the following year, the fourth and last balance sheet of D. J. Airways, as on 30-6-1950, was considered at a shareholders meeting held on 20-6-1951. R. Dalmia presided. Some of the shareholders expressed concern over the amount due from Allenberry and about the Rs. 1,74,45,000 that had been invested in sister companies (Ex. 285-D).

This was followed by a complaint made to the Finance Minister on 20-11-51. This complaint was forwarded to the Registrar of Companies for inquiry. As a result, Inspectors were appointed under the Companies Act to look into the affairs of D. J. Airways but they were thwarted in their task. The books of D. J. Airways were withheld and were later destroyed so that the Inspectors only saw a part of them.

This agitation alarmed R. Dalmia and his associates, so when matters reached this stage, preparations were made to wind up D. J. Airways and denude it of the bulk of its assets so as to prevent them from falling into the hands of the shareholders of D. J. Airways in liquidation.

Among the steps taken to effectuate that were the following. The indebtedness of Allenberry to D. J. Airways was gradually transferred to D.C.P.M. until, on 10-4-1952, D.C.P.M. owed D. J. Airways Rs. 343 lacs (Ex. 26/19) which in 98% of D. J. Airways paid up capital. On the same day, D.C.P.M. was converted from a public to a Private Limited Company.



CHAPTER II

ANTE-DATING EX. 5

Then, at some date near about 9-4-1952, they brought the agreement Ex. 5 into existence and ante-dated it so as to make it appear that it had been executed on 5-8-1951.

We have already had occasion to refer to this document. It is an agreement between D.C.P.M. and D. J. Airways which recited that, as on 30-6-1951, D. J. Airways was possessed of the following assets.

- (1) Rs. 1,35,25,417 0 0 outstanding against Allenberry, including interest up to that date; and
- (2) Rs. 74,00,000 0 0 worth of fully paid-up Ordinary Jaipur Udyog shares, and
- (3) Rs. 35,00,000 0 0 of fully paid-up Ordinary shares of D. J. Aviation.

The next recital states that Allenberry is not able to pay its debt, or even the interest on it after 30-6-1951, or even to fix a time for repayment.

Under the agreement D.C.P.M. took over all these assets valued at Rs. 2,44,25,417-10 and agreed to pay the price by instalments, *without interest*, the last instalment being due after 19 years while the first was not to start till October, 1956, that is not till after 4 years.

We have already explained that the reason for this was that D.C.P.M. owed D. J. Airways Rs. 90,35,368 (Ex. 26/17) at that date and that it had to pay interest at $4\frac{1}{2}\%$, while no interest was payable on the other liability. It was, therefore, very much to the interest of D.C.P.M. to stipulate that the debit that carried interest should be liquidated first; it was equally very much to the disadvantage of D. J. Airways.

But before we deal with the ante-dating we will set out the financial position disclosed from time to time in a number of documents that are not disputed.

First there are a succession of trial balances of *Allenberry* showing the indebtedness of Allenberry to D. J. Airways as follows :

30-6-1951	Rs. 1,28,90,170	3	3	Ex. 304
31-7-1951	Rs. 1,28,90,170	3	3	Ex. 303
30-9-1951	Rs. 1,32,14,324	14	3	Ex. 302
31-10-1951	Rs. 1,32,14,423	14	3	Ex. 301
31-11-1951	Rs. 1,35,25,417	1	0	Ex. 300
29-2-1952	Rs. 1,38,32,240	3	6	Ex. 305

The difference between the balance on 30-9-1951 and 31-7-1951 is Rs. 3,24,154-11-0. This is the interest due to D. J. Airways on the Allenberry account from July to December, 1950.

The difference between the balance on 30-11-1951 and 31-10-1951 is Rs. 3,11,092-2-9 and is on account of the interest due from January to June 1951.

Now these trial balances show that *Allenberry* started with an indebtedness to *D. J. Airways* of Rs. 1,28,90,170-3-3 on 30-6-1951 and that the indebtedness rose to Rs. 1,38,32,240 by 29-2-1952. It also shows that the debt had not been cleared in the meantime.

The trial balances also show that interest was twice calculated and added.

We turn next to the position of *D.C.P.M.* as shown in these trial balances. They show that *D.C.P.M.* owed *Allenberry* the following sums on the dates given below,

30-7-1951	Rs. 48,79,541	5	6	Ex. 303
30-9-1951	Rs. 86,08,026	3	3	Ex. 302
30-11-1951	Rs. 64,37,122	14	3	Ex. 300

Then there is another document, namely, a journal voucher No. 64 (Ex. 298) dated 30-11-1951 which shows that on 30-11-1951 *Allenberry's* books had an entry crediting *D. J. Airways* with Rs. 3,11,092-2-9 on account of interest up to 30-6-1951. We have seen that this is the exact difference between the trial balances as on 30-10-1951 and 31-11-1951. Therefore, the trial balances, this journal voucher and the entries in *Allenberry's* books as on 30-11-1951 all show that *Allenberry* was still indebted to *D. J. Airways* on 30-11-1951 and that interest was payable and *paid* (by adjustment) up to that date.

This document has an entry at the bottom that says.

"Cancelled as amount already adjusted on 29-6-1951"; but that is a forged interpolation made to support the ante-dated agreement Ex. 5 and the other forged documents brought into existence for that purpose.

Next we have two statements (Exs. 307 and 307-A) from *B. N. Kanagat* sent to *R. Sharma* at Calcutta showing that the amount due by *Allenberry* to *D. J. Airways* on 30-11-1951 was Rs. 1,35,25,417-1-0; and that interest had only been paid up to 30-6-1951. The first of these statements was drawn up by *Kanagat* in his own handwriting so he must have looked into the matter personally.

There are two more documents to which we shall refer before passing on to the forgeries. The accounts of *D. J. Airways* (Ex. 26/19) show that *D. J. Airways* paid the following sums to *D.C.P.M.* on the dates set out below,

1-11-1951	Rs. 1,00,000
10-11-1951	Rs. 2,30,000
14-11-1951	Rs. 1,00,000
21-11-1951	Rs. 1,00,000

D.C.P.M. also made repayments from time to time but the position on 18-6-1952 was as follows. Between 6-8-1951 (the day after Ex. 5 is supposed to have been executed) and 18-6-1951, *D. J. Airways* paid as much as Rs. 11,09,252 to *D.C.P.M.* and received from it only Rs. 2,08,005, which means that in that interval *D. J. Airways* was financing *D.C.P.M.*

The other matter is that on 31-10-1951 *D. J. Airways* sold 250 preference shares of Rs. 100 each of *D. J. Aviation* and 1,40,000 deferred shares of *D.C.P.M.* and these investments were in existence on 5-8-1951.

We now turn to the forgeries and the ante-dating. The basic document is Ex. 5. The main purport of that was to transfer assets of D. J. Airways worth Rs. 2,44,25,417-1-0 to D.C.P.M. and to release Allenberry of *all* its liabilities to D. J. Airways, that is to say, the moment that was done the debt of Allenberry amounting to Rs. 1,35,25,417-1-0 on that date was squared and the liability was transferred to D.C.P.M. it became the debtor for this sum in place of Allenberry. To effect this purpose the following documents were also forged and ante-dated.

It will be remembered that some of the shareholders had already demanded at the shareholders meeting of 30-3-1950 (Ex. 285-C) that no further investments be made in any company and that at least one fourth value of the shares be refunded to the shareholders *out of the money that Allenberry owed them*. Allenberry could have done this because its balance sheet as at 30-6-1951 shows that it had sold Rs. 198 lacs worth of disposal vehicles and stores; but that would have placed the assets where R. Dalmia did not want them, namely with the investing public. The only way to nip that in the bud was to release Allenberry from all its obligations to D. J. Airways and pass them on to D.C.P.M. from whom no recoveries could be made. To effectuate that purpose Ex. 5 was forged as well as a number of supporting documents.

Now, as we have seen, interest amount to Rs. 3,11,092-2-9 was not only due from Allenberry on 30-11-1951 but D. J. Airways was actually credited with this in Allenberry's books. In order to offset this an adjustment voucher (Ex. 297) was forged and dated 29-6-1951. That purported to adjust the Rs. 3,11,092-2-9.

Now in order to insert this forged voucher in its proper place in the journal voucher file where all the vouchers were numbered it was necessary to place the forged voucher just ahead of voucher No. 96 which was already there. It would, of course, have been impossible to renumber all the succeeding vouchers so what they did was to alter the number of the existing voucher and make it 96-A and number the forged voucher as 96, and slip it in just ahead of the one that was renumbered 96-A. This is the only place in this file where this change of numbering has occurred.

Another unusual feature is that though the voucher is dated 29-6-1951 interest has been calculated up to 30-6-1951. That is unusual.

Then we have seen that there was genuine interest voucher (Ex. 298/10) dated 30-11-1951 showing that interest of Rs. 3,11,092-2-9 had been calculated up to 30-6-1951. This would, of course, have been wrong if the interest had already been adjusted on 29-6-1951. To offset that an endorsement was forged on the genuine voucher saying,

"Cancelled as already adjusted as on 29-6-1951".

Now it will be seen that Allenberry was not a party to the agreement Ex. 5. It was, therefore, necessary to obtain Allenberry's consent to this replacement of debtors. Therefore, a resolution of Allenberry's Board of Directors was forged and antedated to 16-7-1951 (Ex. 367/87). The only persons said to have been present were R. Sharma and Raizada Manmohanlal. R. Sharma was the Chairman and he signed the minutes. The meeting authorised R. Sharma to confirm the agreement in Ex. 5 subject to the confirmation of D. J. Airways and D.C.P.M.

The antedating of this resolution is to be inferred from the following facts.

1. B. N. Kanagat was the Secretary of Allenberry at that time and yet he is the man who sent the two statements to R. Sharma on 30-11-1951 showing that Allenberry still owed D. J. Airways Rs. 1,35,25,417-1-0 on that date. This sum included the interest payable for the period January to June 1951. B. N. Kanagat drew up the minutes of that meeting as Secretary and R. Sharma signed them as Chairman; and yet they allowed this mistake to continue in Allenberry's books right up to 29-2-1952, as the trial balance as on that date shows.
2. The draft of the proceedings of this meeting in the draft proceedings file does not contain this resolution.
3. The typescript of the page that contains this resolution does not tally with the typescript of the previous page. They have been typed on different machines.

Then a letter (Ex. 202) dated 18-7-1951 was forged and antedated. This was a letter signed by R. Dalmia's secretary P. S. Patke as a director of D.C.P.M. It was addressed to Allenberry and says that after discussing the matter with R. Sharma, D.C.P.M. agreed to the terms of the proposed arrangement. The letter expressly mentions the fact that D.C.P.M. will take over the liability of Allenberry for the Rs. 1,35,25,417-1-0 and that D.C.P.M. will accept payment from Allenberry spread over 20 years and will not charge Allenberry any interest. The net result of this was that Allenberry got rid of its liability to D. J. Airways and of its liability to pay interest and saved its assets from being proceeded against; and, so far as its new liability to D.C.P.M. was concerned, it did not have to pay any interest to D.C.P.M. and its debt was reduced by half because of the instalments. This was greatly to the advantage of Allenberry and to the disadvantage of the unfortunate shareholders of D. J. Airways.

When P. S. Patke was examined as a witness he said that he had no knowledge of the transaction referred to in the letter. He said that the letter was sent to him from the Daryaganj office, he showed it to R. Dalmia and it was then placed before him for signature and he signed it.

Next, there followed a forged set of credit and debit advices. On 23-7-1951 Allenberry sent D.C.P.M. a credit advice (Ex. 299) for Rs. 1,35,25,417-1-0 because of the liability that D.C.P.M. had taken over. On the next day, 23/31-7-1951 D.C.P.M. sent Allenberry a debit advice (Ex. 306-A/55) to show that the corresponding entries had been made in its books. At the same time a Journal entry (Voucher No. 47 Ex. 306) was made in the books of Allenberry debiting the D. J. Airways' account and crediting the D.C.P.M. account.

Next comes D.C.P.M.'s confirmation (Ex. 306-A/55), dated 23/31st July, 1951, advising Allenberry that D.C.P.M. had debited Allenberry with the Rs. 1,35,25,417-1-0 in its books and credited D. J. Airways.

Now it is evident that these two sets of documents, namely, the ones that we have described as genuine and the ones that we say are forged cannot be reconciled; and the question arises which set is correct and whether it was possible to make genuine mistakes in one set or the other?

Now the sum involved is a very large one—over 135 lacs and the trial balances are of course prepared from the books. We are not able to believe that a mistake involving such a large sum could have been repeated month after month from 31-7-1951 down to 29-2-1952, especially as interest was calculated twice in that interval. If Ex. 5 had really been in existence on those dates no interest would have been due because Allenberry was not to pay interest either to D. J. Airways or to D.C.P.M.; also because the books and vouchers of those companies would be affected and the accounts of each had to be scrutinised by so many different persons. They could not all have kept on making the same mistake month after month.

Also, when interest is added credit and debit advices follow, so not only would Allenberry's books have been affected but also those of D. J. Airways.

Then comes the position *vis-a-vis* Allenberry and D.C.P.M. Allenberry's trial balance as on 30-7-1951 shows a debit balance of Rs. 48,79,541-5-0 against D.C.P.M. If the forged documents had been in existence on those dates, especially Allenberry's credit advice to D.C.P.M. (Ex. 299) dated 22-7-1951 and D.C.P.M.'s confirmation (Ex. 306-A/55), dated 23/31 July 1951, then D.C.P.M. would have been a creditor *vis-a-vis* Allenberry and not a debtor.

The "mistake" about D.C.P.M. was repeated in the trial balances of Allenberry as on 30-9-1951 and 30-11-1951. That could hardly have passed unnoticed if this really was a mistake, because against, D.C.P.M. would have been a creditor on those dates and not a debtor.

Then we find facts that suggest interpolation in two places; and there is the conduct of B. N. Kanagat and R. Sharma in respect of the working statements drawn up by Kanagat on 30-11-1951 (Ex. 307 and 307-A). Both these persons are said to have been present at the meeting that is supposed to have been held on 14-7-1951. Surely an error of this magnitude could not have escaped the notice of both of them. In our opinion the cumulative effect of all these factors rules out coincidence and mistake.

From here we pass on to certain other matters that indicate ante-dating. Under Ex. 5 D. J. Airways was denuded of 98% of its assets. They all went to D.C.P.M. That would naturally have left the D. J. Airways short of funds to carry on its day to day business. The agreement Ex. 5 accordingly made the following provision to meet this contingency. Clause III(a) said,

"Up to and until payment of the first instalment has been made, D.C.P.M. would pay D. J. Airways any amount which the latter may require for meeting its normal expenses."

But what were the facts? We find that D. J. Airways lent D.C.P.M. Rs. 5,30,000 between 1-11-1951 and 21-11-1951 which shows that contrary to what was contemplated in Ex. 5, D. J. Airways still had plenty of fund even 3½ months after Ex. 5 and that D.C.P.M. was the one that required assistance and that it got it from D. J. Airways instead of the other way round.

Even when the overall figures shown in Ex. 26/19 is taken we find that D. J. Airways paid D.C.P.M. Rs. 9,01,252 more than it received from that company; and the same document shows that D. J. Airways paid D.C.P.M. Rs. 11,09,252 after 5-8-1951 (Ex. 26/19).

Where did this money come from? And in any event, how is it that a public company was able to lend one of the Dalmia concerns these large sums when that concern was so hard up that it required another 4 years to clear off the debt that it had taken over from Allenberry *without interest*. It does not make sense.

There is also another indication in Ex. 5 that points to ante-dating. Under Clause III(g) D.C.P.M. undertook, supposedly on 5-8-1961 to try and persuade Dalmia Jain & Co. to terminate their managing agency.

“preferably by October 1951 and in all circumstances before June, 1952.”

(The managing agency was in fact terminated on 9-4-1952).

The hollowness of this pretence about persuasion is revealed as soon as we realised that both D.C.P.M. and Dalmia Jain & Co. were controlled by R. Dalmia and Shanti Prasad Jain respectively. At that time R. Dalmia held practically all the shares in D.C.P.M.; and in the other company, Dalmia Jain and Company, Shanti Prasad Jain held all the shares. Therefore, R. Dalmia is said to have persuaded Shanti Prasad Jain about the date of the termination.

In any case, the directors of D.C.P.M. on 5-8-1951 were V. D. Aggarwal, M. K. Roy, S. R. Srivastava and P. S. Patke.

Now though these persons are said to have undertaken to persuade Dalmia Jain & Co. to relinquish the managing agency by October, 1951, no steps were taken till 9-4-1952 when the directors of Dalmia Jain & Co. passed a resolution agreeing to the termination. In between there had been six meetings and this matter was not raised in any of them. These meetings were held on 25-7-1951, 30-9-1951, 4-12-1951, 31-1-1952, 16-2-1952 and 3-4-1952 (Ex. 309).

R. Dalmia was a director of D. J. Airways on 25-7-1951, 30-9-1951 and 3-4-52 and D. J. Airways was the party that was really interested in the termination. M. K. Roy was a director of D.C.P.M. at that time and also a director of Dalmia Jain & Co. He attended the meeting of 9-4-1952 and so did R. Sharma, M. K. Roy and Shanti Prasad Jain. It seems obvious that M. K. Roy at least would have raised the question in the earlier meetings if D.C.P.M. had really given the undertaking on 5-8-1951.

But even that was not all. Another point is that the Resolution of 9-4-1952 (Ex. 309) says that D. J. Airways will not be charged for *office allowance* from July 1951, while the remuneration of R. Dalmia from Dalmia Jain and Co. was to cease from February, 1952. Why this differentiation?

The reason is that D. J. Airways had filed their return (Ex. 777) with the Registrar of Companies showing Dalmia Jain & Co. as the managing agents up to 2-4-1952 and the termination was reported to the Registrar of Companies on 15-4-1952. Therefore, they were not able to terminate the managing agency at once in Ex. 5. And R. Dalmia had already been paid up to February 1952 so they could not say that the agency had been terminated before that. That accounts for these unusual provisions in Ex. 5.

The objects of the ante-dating were as follows :

1. R. Dalmia and the other directors of D. J. Airways contemplated taking D. J. Airways into voluntary liquidation for the reasons that we have set out above. They, therefore, wanted to prevent certain assets of D. J. Airways, such as the shares of Jaipur Udyog and D. J. Aviation, valued at Rs. 109 lacs, from falling into the hands of the Liquidator and ultimately into those of the shareholders. They also wanted to avoid complications of the kind that arose out of the petitions of the shareholders of D. J. Airways for the compulsory winding up of D. J. Airways.

2. Another object was to relieve Allenberry of its obligation to pay D. J. Airways the sum of Rs. 1,35,25,417-1-0 that was owing to it on 30-6-1951 and to prevent either the liquidator or the shareholders of D. J. Airways from enforcing the liability against the assets of Allenberry, assets that were sufficient to meet the obligation; and also to relieve R. Dalmia of the guarantee that he had given to make good every penny that Allenberry owed D. J. Airways.

3. To hide from the shareholders of D. J. Airways the fact that Allenberry had defaulted in payment of the second and third instalment of Rs. 1,11,66,250 under Ex. 37, together with interest on it, on 30-6-1951 and to prevent the liquidator and the shareholders of D. J. Airways from proceeding against the assets of Allenberry in enforcement of their claim or of asking R. Dalmia to make good his promises.

4. To escape payment of the interest on Rs. 1,35,25,417-1-0 at 4½% from 1st July to April, 1951. By ante-dating the agreement to 5-8-1951, that much interest was saved.

5. To checkmate the proposal of some of the shareholders that one-fourth of the value of D. J. Aviation shares should be returned to them out of the money that Allenberry owed D. J. Aviation.

It is difficult to apportion the responsibility but there can be no doubt that R. Dalmia was the moving spirit behind this, and in any event, he cannot escape responsibility because he was a director of D. J. Airways at that time. Other directors of D. J. Airways who attended the meeting that was supposed to have been held on 21-7-1951 to approve of the transfer were R. L. Chordia and M. L. Sodhani.

The directors who approved the transfer on behalf of Allenberry were R. Sharma and Manmohanlal Raizada.

And on behalf of D.C.P.M., P. S. Patke, R. L. Chordia, M. L. Sodhani and R. Sharma.

The vouchers that were forged and interpolated were prepared by R. P. Garg and signed by R. P. Gurha the accountant of Allenberry, while P. S. Patke signed Ex. 202.



CHAPTER III

EVENTS LEADING UP TO THE LIQUIDATION

We will now go back to the events that led up to the liquidation proceedings. We have already said that on 13-4-1952 R. Dalmia issued a circular (Ex. 290) to the shareholders of D. J. Airways,

- (1) asking them not to sell their shares; and
- (2) adumbrating the scheme that was later adopted in the liquidation proceedings except for some very minor alterations.

On 14-4-1952 certain shareholders petitioned the court for

- (1) a compulsory winding up (Ex. 188 and 25); and
- (2) for termination of the managing agency agreement (Ex. 189).

On 22-4-1952 R. Dalmia issued a second circular and again adumbrated the scheme that was later adopted in the liquidation (Ex. 291).

Four days later, on 26-4-1952, D. J. Aviation was converted from a public to a private limited company (Ex. 236/6).

In the interval, R. Dalmia started buying up D. J. Airways shares. Between 13-4-1952 and December 1952 he bought 12 lacs of them through Bharat Union Agencies.

In his circular of 22-4-1952 (Ex. 291) he also asked for proxies. Therefore, it is clear that he began buying up shares and collecting proxies in anticipation of the scheme that he had adumbrated in the circulars.

On 14-5-1952 notices were sent to the shareholders of D. J. Airways about the proposal to take it into voluntary liquidation. The meeting about this was held on 13-6-1952 (Ex. 285). In the meanwhile government ordered an investigation into the affairs of D. J. Airways and appointed Inspectors on 7-6-1952 (Ex.140), *that is just six days before the meeting.*

The following very material points were not disclosed to the shareholders at this meeting.

- (1) They were not given details about the company's working;
- (2) There was no attempt to place the then financial position of the company before them. All that they were shown was the balance sheet as of 30-6-1950 which, by then, was two years old. All the important and disquieting transactions that we have analysed above occurred in the interval. That was all hidden from the shareholders;
- (3) The fact that the agreement Ex. 5 had been entered into and that 90% of the assets of D. J. Airways had been transferred to D.C.P.M. under it was not disclosed; and
- (4) The fact that government had ordered an investigation on 7-6-52 under the Indian Companies Act was not disclosed.

Now R. Dalmia and the directors of D. J. Airways knew all these facts at that date. R. Dalmia was one of the directors at that time and he was present at the meeting. One of his co-directors on that date was R. Sharma, the man who, as explained above, was mixed up with the ante-dating of Ex. 5 and the forged resolution regarding this.

CHAPTER IV

VOLUNTARY LIQUIDATION OF D. J. AIRWAYS

D. J. Airways was taken into voluntary liquidation at this meeting of 13-6-1952 and C. P. Lal was appointed the voluntary liquidator. He knew about the allegations made by the shareholders in their petitions filed in the court on 14-4-1952 (Ex. 188) but he took no steps to inquire into the truth of them; and when he was examined as a witness he said that he did not consider it his duty to make inquiries about the reasonableness of the agreement Ex. 5; and though he knew that the scheme of amalgamation was proposed by only 5 out of 20,000 shareholders of D. J. Airways he said that he did not consider it necessary to find out who they were nor to ascertain how many shares they held. He said that he was satisfied that the scheme was reasonable and so looked no further, not even to see whether D. J. Aviation would be able to carry out its undertakings. His conduct shows that from first to last he was working hand in glove with R. Dalmia.

This liquidation has many gravely disquieting features, not the least of which is the conduct of the liquidator. It discloses either gross negligence on the part of those who ought to be the watchdogs of the general public and the shareholders; or incompetency. It is clearly pointless to appoint watchdogs if they do not perform the duties they are expected to. We shall have occasion to refer to the action of the Registrar of Companies at a later stage. At the moment we will confine our attention to C. P. Lal.

Now, though a liquidator is not a trustee in the strict sense of the term he does stand in a fiduciary position both to the court and to the shareholders. He cannot let the interest of the company suffer, nor can he allow a particular group of shareholders to get a benefit for themselves at the expense of the others. He has to be impartial and has to look to the interests of all. He is an officer of the court and courts insist that he should be upright and they do not encourage a liquidator from resisting claims on technical grounds when there is no defence in substance. So also, it is liquidators' duty to give every assistance and facility in finding out relevant books and papers and allowing proper inspection of the accounts. See Ghosh on Indian Company Law, 10th Edition, Part II pages 98 and 106.

But what did C. P. Lal do? First, he did not disclose any of the very material facts about this company that we have set out above either to the court or to the shareholders, though he knew all about them, or at any rate knew that grave and serious allegations were being made, and he knew that some of the shareholders were complaining very bitterly about malpractices in the management. Had he told the court all this of course, it would have ordered a compulsory winding up, or at any rate would have directed a searching inquiry before permitting a voluntary winding up.

C. P. Lal was present at all three of the meetings of the shareholders that the court had ordered. They were held on 31-12-1952. He said that he did not speak at these meetings though he may have said formally that he put the scheme forward for consideration. If that is true then the minutes

of these meetings are inaccurate because they state that he explained the scheme in detail (Ex. 11).

His excuse for not speaking for "more than a minute" though he put the scheme forward for acceptance was that he was ill. It will be remembered that another liquidator, R. D. Agarwal also happened to be ill when he was called to give evidence before us. But anyway, C. P. Lal says that R. Dalmia was present at all the meetings and that "he faced a very hostile crowd". Therefore, C. P. Lal knew that the scheme was being very seriously attacked and opposed. But not only did he deliberately refrain from looking into the many allegations of misconduct and deliberately refrain from telling the court about them but he did everything in his power to keep the inspectors from seeing the company's account books *and to this day the books of the Joint Venture have not been produced*, not even before us though we called for them. Whose interests was he serving in doing that?

Perhaps his attitude will be more easily understood from the following passage in his evidence,

"After I was appointed liquidator Mr. R. Dalmia telephoned me and told me that these two gentlemen" (R. Sharma and M. R. Jain) "would be able to help me in the matters concerned with the liquidation. I met Mr. R. Dalmia, as far as I remember, about a week or 15 days after my appointment. I met him at his house. Mr. R. Dalmia only had introductory talk with me about the business of the company. He told me that some persons have filed an application in court making various allegations against him and that the Registrar of Companies had already ordered an investigation through Mr. S. P. Chopra."

CHAPTER V

C. P. LAL : VOLUNTARY LIQUIDATOR

We will now have to examine the conduct of the liquidator, C. P. Lal, at length, because we have made serious charges against him and have heard him at length in defence through his counsel, Mr. Hajela; also because, in our view, fraudulent liquidations form a key link in the pattern of frauds that R. Dalmia followed.

By letter No. F.2(16)/49 Dev. dated 7th June, 1952 (Ex. 140) the then Secretary (Development) to the Delhi State Government appointed Messrs. S. P. Chopra & Co. as Inspectors to investigate into the affairs of Dalmia Jain Airways and the terms of reference to the Inspectors were enumerated in that letter.

On 13th June, 1952, D. J. Airways was taken into voluntary liquidation and C. P. Lal was appointed voluntary liquidator at a consolidated remuneration of Rs. 52,500 (Ex. 285F.).

From the outset, C. P. Lal obstructed the Inspectors in their work, and succeeded in doing so for almost four and a half months. The following exhibits clearly show his obstructive attitude.

(i) Ex. 190 is a letter of 15/17th June, 1952 to the Registrar from C. P. Lal, with a copy to the Inspectors, saying that he was going out of town for 10 days. He mentioned that the Company had not received any intimation of the Inspectors' appointment.

(ii) On receiving a copy of this letter, the Inspectors wrote on 18th June to the Registrar requesting him to intimate their appointment to the Company (Ex. 385-A).

(iii) By letter No. Comp. 1045/JSC of 18th June, 1952 (Ex. 140-A) the Registrar of Companies addressed a letter to C. P. Lal informing him of the Inspectors' appointment and requesting him "to render necessary assistance" to the Inspectors. The Registrar also stressed in this letter that a copy of the appointment letter had already been sent to the Company under date 7th June, 1952. This is confirmed by a copy of letter No. F.2(16)49-P & D of 30th June (Ex. 140-A) from the Secretary, (Development) Delhi State Government, to the Registrar of Companies, with a copy to the Inspectors.

(iv) On 2nd July, 1952, the Inspectors wrote to the Registrar (Ex. 145) stating that after waiting for a number of days to see if C. P. Lal had returned, they tried to contact him on 30th June, and although he had returned, he had failed to contact them. They made another attempt on 1st July to contact C. P. Lal and had a discussion on the telephone. C. P. Lal informed the Inspectors that he wanted to have a discussion with the Registrar regarding "the implications of the order for investigation in view of the Company having gone into liquidation". The Inspectors went to the Registered Office of the Company on 2nd July to see C. P. Lal, but he

was not there. Nevertheless, when contacted on the telephone, C. P. Lal informed the Inspectors that "he could not show the books or give any other information (to us) unless he had clarified the legal position." He informed the Inspectors that he would see the Registrar "in a day or two", and will then officially convey to them "tomorrow", namely, 3rd July, if he was in a position to show them the books.

(v) The Registrar of Companies, apparently on receiving the Inspectors' letter of 2nd July, wrote to C. P. Lal on 3rd July (Ex. 147) stating categorically that it had been reported to him that he was evading to show the books to the Inspectors in connection with the investigation, and pointed out that being a liquidator, and hence an officer of the Company, he was required to produce to the Inspectors all books and documents in his custody or power relating to the Company. C. P. Lal was, therefore, requested to "produce all the relevant records to the Inspectors without any further delay", and was even threatened that, failing this, "action under the Indian Companies Act shall have to be taken." A copy of this letter was sent to the Inspectors with a notation in the Registrar's handwriting requesting the Inspectors to "contact the liquidator and start investigation without any further delay."

This letter was received by the Inspectors on 4th July, according to their date stamp, and there is a notation on the letter indicating that they telephoned the Office of the Company at 2 p.m. but the Secretary (M. R. Jain) said that he could not give any information without the liquidator's permission. The Secretary was also evasive as to when the liquidator would be in the office, adding that there was no fixed time for him.

(vi) On 3rd July, C. P. Lal wrote to the Registrar of Companies (Ex. 146) in reply to his letter of 18th June [mentioned at (iii) above]. This letter is revealing. C. P. Lal made the following points :—

(a) He informed the Registrar firstly of his appointment as liquidator and hoped that the Registrar would agree that the order of investigation "has become infructuous because the Company is no longer in existence as such except for its beneficial winding-up". He added that the relevant Sections of the Companies Act, particularly Sections 137, 138 to 141A (of the 1913 Act) applied to Companies which were functioning and were not in the course of winding-up, because, according to him, in the latter case it was the liquidator who was seized of the affairs of the Company.

(b) C. P. Lal then pointed out that perhaps the fact of the Company having gone into liquidation on 13th June, 1952 had escaped the Registrar's notice otherwise he felt that the Registrar would have taken the necessary steps and passed orders for stopping the investigation, which, he averred, would not be warranted by law, after the Company had gone into liquidation.

(c) Finally, having been so categorical about the legal position, C. P. Lal invited the Registrar to appreciate this position, and "issue immediate necessary instructions cancelling the investigation in question."

(d) Copies of this extraordinary letter were sent to the Secretary (Development) to the Delhi State Government and to the Inspectors.

(vii) The Inspectors got impatient and addressed a letter to C. P. Lal (Ex. 149) on 3rd July, complaining that he had not yet given the books for checking and that the day before (2nd July), he had promised to give his final reply "today", meaning 3rd July, as to whether he would let the

Inspectors see the books. They reminded C. P. Lal of his assurance of co-operation with Government and themselves, the Inspectors appointed by Government, and finally asked him bluntly whether or not he will show the books and give the information.

(viii) On 4th July, the Inspectors wrote to the Registrar (Ex. 148) bitterly complaining that:—

(a) they attempted to contact the liquidator but were informed that he was in the Court;

(b) at 2 p.m. the Inspectors telephoned but were told by the Secretary (M. R. Jain) that C. P. Lal had not returned, he did not know when he would return, and there was no fixed time for him to come to the office. The Inspectors even tried to contact C. P. Lal at his house but without success;

(c) the Inspectors then informed the Registrar that it seemed to them that C. P. Lal was "intentionally evading to carry out the orders of the Government and has no desire to give co-operation in producing the necessary books and other papers. Every time we contact him he puts up some plea or the other and every time there is a different plea than the one previously given. We feel that they may be trying to take away the books from the Registered Office of the Company and to remove other documents and evidence on which the investigation has to proceed. It is also quite likely that some of the books or papers may be found missing or might have already been removed;"

(d) the Inspectors then urged the Registrar to take "some serious action". and even suggested that the books may be seized and kept in proper custody.

So that by 4th July, the Inspectors had come to the conclusion that C. P. Lal was not only unwilling to co-operate but was being definitely obstructive, and *they apprehended that the safety of the books and records was in jeopardy.*

(ix) On 7th July, C. P. Lal wrote to the Registrar (Ex. 150) stating that the allegations that he was evading to show the books to the Inspectors were not correct and took upon himself to suggest that the circumstances in which the order of investigation was issued by the Registrar had changed and, therefore, the position required to be reconsidered. He admitted that the Registrar had informed him that his (Lal's) contention was not acceptable to the Registrar. He went on to say that the two Petitions under Sections 162 and 153C of the Indian Companies Act, 1913, were pending before the District Judge and when they came up for hearing on 4th July, the Court had imposed certain conditions within which he was now acting. As, according to Lal, the legal position had considerably changed, he was not himself clear as to how he should act and that he was having the legal position re-examined and in the light of the advice he would make a detailed representation to Government and if necessary to the Court for further directions. He asked the Registrar to advise the Inspectors not to come to the office for inspection.

(x) On 9th July, C. P. Lal wrote to the Registrar (Ex. 151) informing him that on that day (9th July), he had applied to the Court of the District Judge for directions as to whether he should allow inspection of the books and documents relating to the Company and as the matter was now *sub judice* he would abide by the directions of the Court. He hoped that the Registrar

would await orders of the Court and direct the Inspectors to wait till the order was known.

(xi) On 14th July, the Registrar wrote to C. P. Lal (Ex. 153) with reference to C. P. Lal's letter of 9th July and informed him that the submission of an application to the District Judge had not debarred the Government from carrying out the investigation by the Inspectors and advised him once again to produce the books and documents to the Inspectors by 16th July failing which the Registrar said that necessary action would have to be taken against C. P. Lal under the law. A copy of this letter was endorsed to the Inspectors asking them to inform the Registrar if C. P. Lal failed to produce the books by 16th July.

(xii) In reply to the Registrar's aforesaid letter of 14th July, C. P. Lal wrote to him on 16th July (Ex. 154) that without discussing the opinion expressed by the Registrar, the Petition pending in the Court of the District Judge was fixed for hearing on 22nd July, and *for the first time* he suggested that he was collecting the books and accounts of the Company. C. P. Lal also wrote requesting that the Inspectors may be asked to stay their hands till the Petition had been decided.

(xiii) On 17th July, the Inspectors wrote to the Registrar (Ex. 155) informing him, as per instructions contained in the endorsement to his letter of the 14th addressed to C. P. Lal, that the latter had failed to produce the books on the 16th and the Inspectors suggested to the Registrar that some strong and immediate measures be taken to have the books and documents produced for inspection.

(xiv) On 25th August, the Secretary (Development) for the Delhi State Government wrote to C. P. Lal (Ex. 156) reiterating his stand that the appointment of the Inspectors was made prior to the Company going into voluntary liquidation and therefore the orders of appointment were not affected by the subsequent act of the Company in appointing a voluntary liquidator. The Secretary (Development) further pointed out that there was no provision in the Companies Act, 1913 for the stay of proceedings by the Inspectors on the appointment of a voluntary liquidator and that the winding-up proceedings could not, as suggested by C. P. Lal, claim any precedence over the investigation into the affairs of the Company ordered by the Government. The letter wound up with the direction to make all the books of accounts, documents, materials and information to be made available to the Inspectors as may be required by them immediately, failing which, the Secretary stated that the State Government would be compelled to take action against C. P. Lal under Section 140(3) of the Indian Companies Act, 1913 for failure to produce the books before the Inspectors. This letter was endorsed to the Inspectors who were asked to intimate 'at a very early date' as to whether the books of accounts had been made available to them by the voluntary liquidator.

(xv) On 29th August, the Inspector wrote to C. P. Lal (Ex. 157) stating that they were glad to know that C. P. Lal had now decided to co-operate with the investigation proceedings and to place the books at their disposal. The letter gave certain instructions to C. P. Lal with regard to the production of the books, etc.

(xvi) In reply to the last mentioned letter of 29th August from the Inspectors, C. P. Lal wrote on 30th August (Ex. 158) expressing surprise

at the comment made by the Inspectors and stated that there was no question of any co-operation or non-co-operation with the investigation proceedings on his part. He added that his representations were made to Government and in exercise of his legal rights as the Custodian of the interest of the shareholders, and therefore to draw any inference of non-co-operation on C. P. Lal's part was absolutely out of place and unfair. He further added that all this was now past history and hoped that there would be no misunderstanding. He requested the Inspectors to call at the Company's office on 2nd September.

(xvii) Having offered his co-operation on 30th August, and having shed *crocodile tears* over the interests of the shareholders, C. P. Lal suddenly wrote to the Inspectors on 5th September (Ex. 159) with which he enclosed a letter received from R. Sharma and M. L. Sodhani (Ex. 160), two of the ex-Directors of D. J. Airways and requested the Inspectors not to proceed with the investigation any further and to wait till the evening of 9th September. The Inspectors were informed that they could start their investigation on 10th September, provided no stay order was passed by the High Court on 9th September. At this stage, it would be worthwhile examining the contents of the letter from the two ex-Directors (Ex. 160). These two, who were at all times closely connected with R. Dalmia as an employee in the case of R. Sharma, and associated with him as in the case of M. L. Sodhani, expressed great anxiety and concern at C. P. Lal giving inspections of the books to the Inspectors. They went on to tell him that this was very improper and that he must appreciate that it was his duty to safeguard the interests of the shareholders who had elected him (C. P. Lal). They stated that they expected that in a matter like this, C. P. Lal would move the High Court for restraining the investigation, but that as he had not done it himself, they, the two ex-Directors, intended to move the High Court themselves. Notice was, therefore, given to C. P. Lal that the inspection of the Company's records should not be proceeded with at least until 9th September, by which time orders of stay from the High Court were likely to be available. Finally, they threatened C. P. Lal that he was not to allow the Inspectors to proceed with the investigation, and if he did not do this, he would be doing so at his own risk.

(xviii) The Inspectors thereupon wrote on the same date, 5th September (Ex. 161) to C. P. Lal, referring to the discussion that afternoon when they were informed that they would not be allowed to proceed with the investigation although it had been allowed to be started the previous afternoon. In a state of exasperation, the Inspectors asked C. P. Lal to note the fact that he would rather take instructions from some of the ex-Directors or act according to their wishes than permit them to proceed with the investigation under the orders of Government. The Inspectors then went on to record the fact that they had not agreed to C. P. Lal's request to stay the investigation but that he had refused to show the books and documents.

(xix) On the same date, 5th September, the Inspectors wrote to the Registrar of Companies (Ex. 162), informing him first of all that they had received a letter from C. P. Lal, dated 30th August, to start the work on 2nd September and that when he was contacted on that day (2nd September), he informed the Inspectors that the work may be commenced on the 4th as he was going out of Delhi on the 3rd. On the 4th C. P. Lal preferred that the work be started not earlier than 3 p.m. and some books were placed before the inspectors.

The Inspectors then informed the Registrar that "different excuses" were given for having the continuation of the work delayed and finally C. P. Lal agreed to have the work resumed at 2-30 p.m. on 5th September the day on which the Inspectors attended his office.

On reaching there, the Inspectors were informed by C. P. Lal's representative that the books would not be made available, and the Inspectors were asked to contact C. P. Lal. The Inspectors informed the Registrar that C. P. Lal had told them that he had received a letter from two of the ex-Directors of the Company who had "disapproved" the procedure of C. P. Lal allowing them the inspection of the books. The Inspectors then quoted to the Registrar a few of the matters which they had found even in the course of their brief examination of the books on the afternoon of 4th September, and stated that the attitude of C. P. Lal in trying to keep the books from them created suspicions in their mind that C. P. Lal knew of serious discrepancies in the books which he would like to withhold and that all possible means were being adopted to stop the investigation proceedings from being carried out.

A copy of this letter was sent to the Secretary (Development) to the Delhi State Government.

(xx) Apparently, C. P. Lal got provoked by the Inspectors' letter of 5th September (Ex. 161) and wrote to them on 8th September (Ex. 163) and told them that their suggestion that he was taking instructions from any of the ex-Directors was "most improper and unwarranted", and that he had nothing to do with any Director or Directors, and that he was not going to act according to their wishes or take instructions from them. He added that as the ex-Directors wanted an opportunity to move the High Court, he thought it was not unreasonable to have the inspection stayed till 9th September, C. P. Lal added that he had informed the signatories that unless they brought an order from the High Court, the work of the Inspectors would go on without interruption from 9th September. He instructed the Inspectors to proceed with the investigation on 9th September as soon as they heard from him.

A copy of this letter was sent to the Registrar of Companies asking him to request the Inspectors to contact C. P. Lal on the afternoon of 9th September.

(xxi) The Inspectors wrote to C. P. Lal on 10th September (Ex. 164) which letter again shows how C. P. Lal was attempting to delay the course of the investigation :—

- (a) by not making himself available on the telephone when the Inspectors telephoned him although he was at the house; and
- (b) by asking the Inspectors to undertake their work at the Company's office daily from only 3 p.m. onwards, so that hours of work would be seriously curtailed.

(xxii) In reply, C. P. Lal wrote to the Inspectors on 10th September (Ex. 165), in which he suggested a discussion with the Inspectors on the next day to arrange for their working hours, but at the same time, he pointed out that the Inspectors should take into consideration the fact that the day to day work of the Company should go on reasonably thereby suggesting—that he could not make the books available all day during working hours. As to the Inspectors suggestion that they would bring 2/3 persons from

their office to work on the inspection, C. P. Lal stated that there was delicacy involved in the matter in view of two cases pending in the court against the Company and the outgoing Management, and he suggested, while repeating his hollow assurances of full cooperation, that the inspection should be conducted confidentially, so that there may be no charge against the Inspectors or himself of any complicity in prejudicing the proceedings in the Court. He then went on to point out the difficulty of accommodating 3 more persons in the office, but suggested that the matter may be considered the next day.

It is difficult to conceive how Inspectors can perform their work in a big Company of this nature, particularly when speed was the essence of the matter, if they are given 2 to 3 working hours per day. In our opinion this was nothing but an attempt to prolong the inquiry, in order to push through the scheme of amalgamation. We shall deal with that later. It is also evident that C. P. Lal did not want a larger staff of Inspectors to work in his office as that would have meant quicker disposal of the work.

(xxiii) Between the 10th and 20th September, apparently some books were produced before the Inspectors, but it is also apparent that as few books as possible were produced and without any vouchers. This is clear from the Inspector's letter, dated 20th September (Ex. 166) addressed to C. P. Lal, in which the Inspectors pointed out the material they would require for the purpose of their investigation and which had not been produced. The Inspectors pointed out also that at the rate at which the books were produced, it would not be possible to finish the investigation within a reasonable time and requested C. P. Lal to make suitable arrangements to remove these difficulties.

(xxiv) Some investigation work appears to have proceeded up to 9th October, on which day C. P. Lal wrote to the Inspectors (Ex. 167), informing them that certain books had to be produced in the Court of the District Judge at Delhi on the next day, 10th October, in the matter of S. Chandra Vs. Dalmia Jain Airways Ltd. (Ex. 188). He, therefore, requested the Inspectors to stay their work so that he could prepare a list of the books for production in Court.

(xxv) On 11th October, C. P. Lal wrote to the Inspectors (Ex. 168) that the books had been received from the Court and that the investigation may be started from 14th October.

(xxvi) On 13th October, the Inspectors wrote to C. P. Lal (Ex. 169) in which they drew his attention to the various books and information which they had asked for earlier, particularly in their letters of 29th August (Ex. 157) and 20th September (Ex. 166). C. P. Lal was told in this letter that was taking a long time for the information to be produced and at that rate the investigation was likely to be must delayed.

(xxvii) On 22nd October, C. P. Lal wrote to the Inspectors (Ex. 171) and gave them some of the information asked for earlier.

With this letter was enclosed Ex. 172, a letter from the Secretary of Allenberry & Co. Ltd. to D. J. Airways, stating that the books of the joint venture business for their four half-years ended 30th June, 1948 had been sent to Dacca in connection with the income-tax assessments in Pakistan and that they had been held up there.

(xxviii) On 25th October, the Inspectors wrote to C. P. Lal (Ex. 173) and made inquiries regarding various matters which had arisen in the course of their work, and in particular, about the books of the joint venture.

(xxix) On 28th October, the Inspectors wrote to the Secretary (Education) to the Delhi State Government (Ex. 174) in reply to his letter of 16th October, in which he had asked the Inspectors to make a special efforts to complete the investigation of D. J. Airways. In this letter, the Inspectors pointed out the various difficulties they had encountered in the performance of their work and the lack of information, or information delayed on purpose, and asked the Secretary whether he would like to have a report on the matters which they had already investigated.

(xxx) On 28/29th October, C. P. Lal wrote to the Inspectors (Ex. 175) in reply to their letter of 13th October (Ex. 169); and in reply to para 2 of the Inspectors' letter of 25th October (Ex. 173), C. P. Lal stated that he was communicating the substance of para 2 to Allenberry & Co. Ltd., and would revert to the subject on hearing from them. The aforesaid para 2 referred to the inquiries made by the Inspectors concerning the books of the joint venture business. The fact that C. P. Lal, as late as 28th October, had to refer the matter to Allenberry regarding the Joint Venture Accounts and books, indicates that he had taken no steps whatsoever in the discharge of his duties as liquidator. The joint venture business was the only business carried out by D. J. Airways during its existence, apart from a few stray air charters in the Air Section.

In the same letter, C. P. Lal pointed out that the auditors of the Company, M/s. Sodhbans & Co. were asked to give a full report on the condition of the Company as on the date of its going into liquidation, viz., 13th June, 1952, and that the auditors had proceeded with their work, but before they could complete it, the Inspection had intervened and the work of the auditors came to a standstill. C. P. Lal also complained that the normal work of the Company and the winding up also was at a standstill because of the inspection, which is entirely untrue. The Company did not work as such, the joint venture having been terminated on 30th June, 1948, four years back, and as far as the winding-up was concerned, C. P. Lal was doing precious little.

(xxxi) Then there are two letters both of 4th November, one from C. P. Lal to the Inspectors and the other from the Inspectors to C. P. Lal (Ex. 176 and 177 respectively). In the former, C. P. Lal informed the Inspectors that all the books had been produced except the joint venture books, but the Inspectors in their letter pointed out that some of the books, other than the joint venture, had still to be produced. In respect of the joint venture books, the Inspectors stated that since they were with the General Manager of Allenberry at Dacca, they could, if necessary, invoke the assistance of Government to make the books available for inspection. The books of the Air Section were partially produced as shown by the Inspectors' letter to C. P. Lal, dated 15th November (Ex. 178).

(xxxii) Apparently, the investigation was again held up and on 17/18th November, C. P. Lal wrote to the Inspectors (Ex. 179) that the Air Section books for 1946/47 and 1947/48 which were at Calcutta were expected to be re-arranged for production before the Inspectors in about a week or ten days' time.

Regarding the joint venture books, he enclosed a copy of a letter under date 4th November, received by him from the Secretary of M/s. Allenberry (Ex. 179-A), in which the latter informed C. P. Lal that the Income-tax Officer had given an assurance to their Dacca Office that he would allow the books to be brought to India about the end of November, and said that there was reasonable chances of this being fulfilled.

(xxxiii) In reply to C. P. Lal's letter of 17/18th November (Ex. 179) the Inspectors wrote to him on 20th November (Ex. 180) pointing out that while they realised that it would take time to re-arrange the records, the information asked for should have been forthcoming and the books re-arranged "by this time" (viz. 20th November). C. P. Lal was reminded again about the production of vouchers and told that the queries raised by them (the Inspectors) should be settled before they proceeded further with their work.

(xxxiv) On 25th November, one Chhail Biharilal wrote to the Inspectors on behalf of C. P. Lal (Ex. 181) stating that the books of the Air Section for 1948 and 1949 had not been inspected and that the Inspectors had not turned up as expected; besides material had been gathered to answer 10 out of the 20 points raised by the Inspectors.

(xxxv) On 29th November, the Inspectors wrote to the Secretary, Ministry of Finance (Ex. 195) that by a letter, dated 26th November from the Secretary to the Delhi State Government to the Registrar of Companies, a copy of which had been forwarded to the Inspectors, it was communicated that the Chief Commissioner, Delhi, had appointed Messrs Vaidyanath Aiyar & Co. as Inspectors to investigate into the affairs of D. J. Airways and that the Inspectors had been asked to hand over all the books and documents to Messrs Vaidyanath Aiyar & Co. This was at the time when the report of the Inspectors was almost ready and they informed the Secretary to the Ministry of Finance that the report was handed over to the Secretary, Delhi State Government on 28th November.

(i) It will be appropriate to see now what C. P. Lal did as a Liquidator. But before doing so we will observe the duties cast upon a Liquidator. To put it shortly, the duties of a Liquidator would be to realise the assets of the company, to pay off its liabilities and to return the balance, if any left thereafter to the shareholders. In certain cases, the Liquidator would be justified in carrying on the business of the company with a view to its beneficial winding-up. It will be seen from this that C. P. Lal did nothing. Ex. 171, dated 22nd October, 1952 is a letter addressed by him to the Inspectors from which it is obvious that when the Inspectors asked for the books of the joint venture business with Allenberry, which business constituted, as we have seen the above, the only business of D. J. Airways apart from stray air charters, C. P. Lal had not even bothered to collect the books of the joint venture. With Ex. 171 he enclosed the letter, dated 10th October, 1952 from R. P. Gurha, Secretary of Allenberry & Co. Ltd., addressed to D. J. Airways (In Voluntary Liquidation) (Ex. 172) stating that the books were at Dacca. The relevant portion of Ex. 171 reads as under :—

"On receipt of your requirements I got an enquiry addressed to M/s. Allenberry & Co. about the books referred to in this para. I am enclosing a copy of the letter received from them which will explain the position."

The letter enclosed is Ex. 172.

(ii). When the Inspectors wrote to C. P. Lal again on 25th October (Ex. 173) they enquired what books were kept in respect of the joint venture account with Allenberry, asked him to furnish a list of the books maintained, whether any efforts were made to obtain them for the inspection of the Inspectors and when these were expected to be received, and finally they wanted to know at what places in the territory of India the goods of the joint venture were stored and sold and what books were maintained at such places. In Ex. 175, dated 28/29th October, C. P. Lal wrote to the Inspectors in reply to the above enquiry as follows :—

“I am communicating the substance of para 2 of your letter under reply to Messrs. Allenberry & Co. Ltd., and will revert to the subject on hearing from them.”

(iii) Similarly, in the same letter (Ex. 171), C. P. Lal informed the Inspectors that he had “ordered that the old records of this section should also be collected and made available to you without avoidable delay”. “This section” refers to the Air Section of D. J. Airways and by the “Old records” C. P. Lal meant the records prior to 1950/51. This indicates that he had not made any efforts even to see the books of the Air Section prior to 1950/51.

(iv) C. P. Lal did not even have list of investments made from time to time in the shares of companies showing the name of the company, number of shares purchased, normal value of each share, amount paid whether cost or market, sellers’ or brokers’ notes or intimations through whom the shares were purchased, when purchased, balance sheets of such companies and the list of Directors of those companies pertaining to the period one year before and one year after the investments remained in those companies. He wrote to the Liquidators that the list was under preparation, when he was requested to produce such a list.

(v) Again, C. P. Lal took no action with regard to Ex. 5 of 5th August, 1951 with which we have already dealt.

Was it not the elementary duty of a liquidator to enquire into the agreement whereby a company owned by R. Dalmia owed a debt to another company—a public company (D. J. Airways)—to the extent of 98 per cent of its capital? Equally, was it not the duty of the Liquidator to proceed against the Directors by making an application to the Court under Section 235 of the Indian Companies Act, 1913? C. P. Lal did none of these things.

(vi) There are other instances but these will suffice to show that C. P. Lal took no action and the reason why he took no action is explained below :—

(5) On 16th November, 1952, 5 shareholders of the company, namely, P. K. Roy, S. N. Dudani, R. P. Gurha, M. R. Jain and L. R. Sharma wrote to C. P. Lal (Ex. 8) that on negotiations carried out by them with Dalmia Jain Aviation Ltd., the latter company had agreed to take over the entire existing assets and liabilities of D. J. Airways provided the draft scheme which was enclosed with that letter was sanctioned by the Court with such modifications as may be acceptable to them. These five were all employees of Dalmia concerns. C. P. Lal was, therefore, requested to apply to the

Court for taking such steps as may be necessary for getting the scheme sanctioned.

(6) Nothing happened until 3rd December and Mr. Hajila, Counsel for C. P. Lal, stated that C. P. Lal could not take any action either in the liquidation proceedings or under the scheme until the disposal of certain matters which were pending before the District Judge. On 3rd December the District Judge refused to grant the petition for the compulsory winding-up of D. J. Airways (Ex. 25) and on that very day, C. P. Lal, who was obviously waiting in the wings to jump on to the stage, rushed in with his application to the Court under Section 153 and 153A of the Indian Companies Act, 1913 (Ex. 10) for amalgamating D. J. Airways with D. J. Aviation Ltd. It may be explained that the scheme is dated 3rd December, 1952 the very day on which the Court dismissed the aforesaid petition (Ex. 25) for the compulsory winding-up of the D. J. Airways. The sudden burst of speed on the part of C. P. Lal is remarkable when one observes his total inaction in liquidation proceedings and the prevaricating and obstructive attitude he adopted towards the Inspectors for 4½ months.

(a) On 5th December, 1952, the District Court heard the application and appointed one Charan Das Puri, Advocate, to be Chairman of three meetings to be held on 31st December, 1952 at the registered office of the company, and as enjoined in the Court's orders, Charan Das Puri submitted his report of the meetings to the District Court (Ex. 11). The scheme was placed before the District Judge and was announced on 10th February, 1953.

(7) Briefly, the scheme was for the transferee company, namely D. J. Aviation Ltd. to pay to the shareholders Re. 1 per share immediately, eleven yearly instalments of Annas 12 each, and a final instalment of Re. 1 payable one year after the last of the aforesaid eleven instalments. In the alternative, instead of receiving the amount in instalments, the shareholders were given the option to accept either (a) a cash payment of Rs. 4-8-0 per share to be paid within two weeks of the said notice or (b) a sum of Rs. 6 to be paid in six six-yearly instalments of Re. 1 each, the first instalment being payable within 6 weeks of the said notice. It is the alternative proposal which was modified when the scheme went before the District Judge and the modifications were as follows :—

(a) Rs. 5-4-0 per share immediately to such shareholders who desired to avail of the option; (b) in the alternative Rs. 7 in five years; and (c) in the alternative Rs. 10-4-0 per share in ten years. (The Act that was then in force) was to ask the court to examine into the conduct of any promoter, director or officer of the company under liquidation if certain improprieties or wrongs would appear to have been committed by them.

We have seen that to the knowledge of C. P. Lal an amount of Rs. 2,44,25,417-1-0 was transferred to D.C.P.M. under Ex. 5, supposedly on 5-8-1951. The trial balance of D. J. Airways as on 13-6-1952 (Ex. 6) showed that in addition to the debt thus taken over (supposedly on 5-8-1951) D.C.P.M. owed D. J. Airways another Rs. 99,53,506-9-5 on its own account bringing the total indebtedness up to Rs. 3,43,78,923-10-5. It was, therefore, evident that D.C.P.M. had not paid D. J. Airways anything between 5-8-1951 and 13-6-1952. This is a matter that, on the face of it, required looking into. But no inquiry was made nor was the court apprised of the situation.

Then, again, as we have seen, the only assets of D. J. Aviation on the date of the meeting were the cash and bank balances of Rs. 3,554-12-0 and the unsecured indebtedness of D.C.P.M. amounting to Rs. 99,93,963-15-6. The date of the meeting was 31-12-1952 and this fact was not disclosed at that meeting nor was it disclosed that at that time D.C.P.M. had been converted into a private limited company in which R. Dalmia was practically the sole beneficiary.

Now one of the purposes of the liquidation was to get the books of D. J. Airways out of the way so that they could be destroyed. We will now examine that and see how C. P. Lal was a party to this too.

(8) On 13th February 1953, C. P. Lal wrote to R. Dalmia Jain Aviation Ltd. (Ex. 15) informing them of the order of the District Judge, dated 10th February (Ex. 12) and requesting the company "to depute one of your officers duly authorised to take charge of all the assets and records of the Dalmia Jain Airways Ltd., Delhi (In Voluntary Liquidation) from me." He also informed the company in the same letter that he was retaining Rs. 52,500 as his remuneration and another sum of Rs. 7,500 for the outstanding costs of liquidation. Accordingly on the same date, namely 13th February 1953, he wrote to the manager, the Punjab National Bank Ltd., Delhi (Ex. 24) to transfer a sum of Rs. 52,500 to the Savings Bank Account of C. P. Lal at Hazarat Ganj Branch, Lucknow and also asked the bank to transfer Rs. 7,500 to the Current Account of D.J.A. It may be mentioned here that there is some discrepancy in the date of Ex. 15 and Ex. 19. Ex. 19 is exactly the same letter as Ex. 15 except that in Ex. 19 the date is February 12th and not February 13th as in Ex. 15. We accept that this may be a mistake but nevertheless even taking February 13th as being the correct date as per Ex. 15, one can see the hurry with which C. P. Lal was moving on that day.

(9) After the Board Meeting, G. Ramchandran, a Director of Dalmia Jain Aviation Ltd., who incidentally was the Stenographer to R. Dalmia, was deputed by letter, dated 13th February, 1953 (Ex. 16) addressed to C. P. Lal by S. N. Dudani, Secretary of D. J. Aviation Ltd., to take charge of all the assets and records of D.J.A. This letter must have been typed after 5.30 in the afternoon, that is to say, after the Board Meeting of D. J. Aviation Ltd., and taken thereafter by G. Ramchandran to C. P. Lal. On the same day, 13th February 1953, G. Ramchandran wrote a letter to C. P. Lal (Ex. 17) confirming that he had received complete charge of all the assets and records including the records in the safe of D.J.A. Again on the same day, February 13th, 1953 (Ex. 20) C. P. Lal wrote a letter to D. J. Aviation Ltd., confirming that he had handed over the charge of D.J.A. to G. Ramchandran. Then there are three other letters, all of 13th February 1953, addressed by C. P. Lal to the Punjab National Bank Ltd., Delhi (Ex. 21, 22 and 23) asking the bank to transfer certain sums standing to the credit of D.J.A. to D. J. Aviation Ltd. We find, therefore, that after the Board Meeting of D. J. Aviation Ltd., which concluded at 5.30 in the afternoon, there was an exchange of at least three letters namely, Ex. 16, Ex. 17 and Ex. 20. Contrast this action on the part of C. P. Lal with his inactivity in handing over the books and giving information to the Inspectors.

(10) To sum up the attitude of C. P. Lal,

(i) He obstructed the Inspectors and delayed the production of information to them, firstly on alleged legal grounds, and secondly, when these were out of the way, by other methods described above. The interests which the Inspectors were safeguarding and the interests which the Liquidator was supposed to safeguard were common, namely, those of the shareholders and shareholders alone. In the circumstances, he should not only have offered all co-operation to the Inspectors, but should have welcomed the inspection which would have given him sufficient material to help him in the course of carrying out his duties as a Liquidator as also to proceed against the directors and the officers of the company.

(ii) He took no action to look into the affairs of the company or to collect its assets or look into the agreement (Ex. 5), dated 5th August, 1951 which transferred 98% of the assets of D.J.A., the public company in liquidation, to D.C.P.M., another company controlled by R. Dalmia, or to take any proceedings against the directors and officers under section 235 for recovery of the amount lost to the company.

(iii) He kept dormant until 3rd December when the Court dismissed the petition for the compulsory winding-up of D. J. Airways, and then with great speed, simultaneously produced the scheme of amalgamation on the same day to the Court. When the scheme was passed by Court on 10th February 1953, he filed the Order of the Court on the next day with the Registrar under section 153A (3), petitioned for formal directions on the order on the same day, namely, 11th February, obtained the directions of the Court on 13th February and handed over the books on that very day to the transferee company, Dalmia Jain Aviation Ltd., after office hours, without taking any undertaking from that company not to destroy the books and to make them available for inspection when called for; and this despite the various allegations of mismanagement against the company and the total loss of its assets in favour of a company controlled by R. Dalmia.

(11) Looking to the above, we cannot but arrive at the inevitable conclusion that C. P. Lal was in conspiracy with R. Dalmia to prevent any action being taken against the directors and officers for mismanagement and this can be borne out also by the amount of fees sanctioned for his appointment, namely, Rs. 52,500, of which eventually he repaid Rs. 20,000. We may add that we are not attempting to lay down a yardstick for fees which Liquidators should charge, but it is apparent, that the fees here were totally out of proportion to the work involved and smacked of a consideration for services other than that for professional services as Liquidator.



CHAPTER VI

SCHEME OF AMALGAMATION

Now to go back to the liquidation proceedings. On 5-1-1953, C. P. Lal, as Liquidator presented a petition to the court of the District Judge, Delhi, at the instance of five shareholders for a scheme under Section 153 and 153-A of the Companies Act. The facts leading up to this are follow :—

C. P. Lal admitted in his evidence that he had an interview with R. Dalmia at Dalmia's house soon after his appointment as liquidator and that Dalmia told him about the appointment of the Inspectors and about the allegations that the shareholders were making against him.

On 16-11-1952, five of the shareholders of D. J. Airways wrote to the liquidator (Exs. 8 and 9) and told him that D. J. Aviation had agreed to take over all the existing assets and liabilities of D. J. Airways under a scheme that they wanted C. P. Lal to present to the Court.

The five shareholders were as under :

Shareholder											No. of shares registered in their name
P. K. Roy	..	..	..	..	..	..	..	..	..	..	4,94,320
S. N. Dudani	..	..	..	..	..	..	..	..	..	..	2,59,290
R. P. Gurha	..	..	..	..	..	..	..	..	..	..	2,29,815
L. R. Sharma	..	..	..	..	..	..	..	..	..	..	1,75,680
M. R. Jain	..	..	..	..	..	..	..	..	..	..	200

These persons were all in the employment of R. Dalmia or one of the Dalmia concerns and they held these shares *benami* for the Bharat Union Agencies, in which company R. Dalmia was the main beneficiary. The shareholders' position of Bharat Union Agencies on this date was as follows :—

Out of the 2,000 shares

R. Dalmia held 1,200 and

Govan Bros. 800

Govan Bros. is just another name for R. Dalmia because at that date he was the sole beneficiary in Govan Bros. Therefore, when all the aliases were discarded it means that R. Dalmia was at that date the beneficiary in Rs. 1,15,00,000 worth of D. J. Aviation shares out of a total of Rs. 3,50,00,000, that is to say, of nearly 43% of the paid-up capital; and he, hiding behind a screen of so-called shareholders was the person when wanted Lal to present the scheme to the Court.

C. P. Lal says that he did not feel it was necessary for him to look into this because he was satisfied with the merits of the scheme; but he admits

that he knew that S. N. Dudani, R. P. Gurha and M. R. Jain were connected with R. Dalmia, and he also admits that he knew, as the scheme itself says, that Rs. 15 lacs of shares are "held by certain persons or joint stock companies associated directly or indirectly with Seth R. Dalmia."

C. P. Lal said that R. Dalmia telephoned him after this and asked him to see whether the scheme was in the interests of the shareholders.

Under the scheme (Annex. A to Ex. 10) the shareholders were given an option either,

A. to accept.

- (1) a down payment of Re. 1 per share, with
- (2) eleven annual instalments of As. 12.
- (3) a final payment of Re. 1.

That is to say payment of each Rs. 10 share was to be spread over 12 years; or

B. (1) a cash payment of Rs. 4/8/- per share, or

(2) Rs. 6 in six-yearly instalments of Re. 1 per share.

On 20-6-1951, R. Dalmia gave the shareholders of D. J. Airways a categorical assurance at the shareholders' meeting held on that date that he would be personally responsible for every penny that was advanced to Allenberry (Ex. 285/D). But what was the value of that assurance?

He was in control of both D. J. Airways and Allenberry and see what happened. Allenberry owed D. J. Airways a very large sum of money and on 11-6-1948 Allenberry said they were unable to pay anything of their debt, not even the interest. R. Dalmia did not come forward and pay up though, to all intents and purposes Allenberry was just an alias for himself and his relatives. Instead the agreement, Ex. 37, was entered into under which Allenberry said it would pay in three instalments, the first of which was due on 30-6-1949.

Again what happened? There was default in payment of the very first instalment. R. Dalmia did not step into the breach and make good the deficit. Instead there followed the juggling with the accounts that we have seen. The shareholders of D. J. Airways got nothing out of it.

Then came Ex. 5 under which D.C.P.M. took over Allenberry's liability and agreed to pay up with 19 years but without interest. Again R. Dalmia did not come forward to make good even the interest.

And then what happened to D.C.P.M.? Even if 5-8-1951 he accepted as the date of Ex. 5, D.C.P.M. went into liquidation on 18-2-1953 without even the customary 21 days' notice and, following the pattern of D. J. Airways, there was a members' voluntary winding-up, a scheme, and a transfer of all assets to Delhi Glass Works.

Now whether C. P. Lal knew these facts or not he *could* have known if he had exercised the due care and caution that is expected and required of a liquidator, particularly after the strong allegations made by some of the shareholders had been brought to his notice, and after the appointment of the Inspectors. But even if that is disregarded it is an ordinary business precaution to require something more than an airy verbal promise

in a large business transaction of this nature. Something more is required in a normal business deal. C. P. Lal as a lawyer promised a fee of Rs. 52,500 for this liquidation must have known that.

And what was the financial position of D.J. Aviation? It was floated as an airways company and never did any aviation business. No part of its supposedly paid-up capital of Rs. 1 lac was used for the purpose for which the company was floated, and it had no assets except the unsecured indebtedness of D.C.P.M. amounting to Rs. 99,93,963-15-6, and cash and bank balances of Rs. 3,554-12-0; and it had never paid any dividends. Of the supposedly paid-up capital of Rs. 1 lac, only Rs. 10,000 was received in cash. The balance of Rs. 90,000 was just debited to the D.C.P.M. account in its books; and we have seen what D.C.P.M. was worth. It had no means of clearing that liability.

Despite this C. P. Lal presented the scheme to the court (Annex. A to Ex. 10) and recommended that the court accept it and said,

"The petitioner has carefully examined the proposed scheme of arrangement."

The petition only set out the following facts,

- (1) "that the petition was being filed at the request of certain shareholders of D. J. Airways;
- (2) If the scheme was sanctioned it would save much expenditure and would greatly facilitate the expeditious and beneficial winding-up of D. J. Airways; and
- (3) that he had "carefully examined" the proposed scheme and believed that it deserved consideration by the court and the shareholders".

The following very material facts about the scheme were not disclosed to the court :

- (1) that under an agreement dated 5-8-1951 (Ex. 5) D. J. Airways had transferred assets amounting to Rs. 2,44,25,417-10 (that is 98% of its paid-up capital) to D.C.P.M. and that D.C.P.M. had promised to pay for it in 19 years without interest and that no security was taken;
- (2) that Government had ordered an investigation into the affairs of D. J. Airways and that the books of the joint venture business maintained by Allenberry & Company could not be produced before the Inspectors;
- (3) that the company's latest financial position could not be shown because the auditors report about the period from 1-7-1951 to 13-6-1952 had not been received;
- (4) that the transferee company, D. J. Aviation, was a private limited company that had not declared any dividends on its ordinary shares right from the date of its incorporation;
- (5) even when he did receive the audit report on 6-2-1953 he still did not bring the report to the notice of the court; and
- (6) he gave the court no clue about the financial position of the transferee company, D. J. Aviation.

When we compare C.P. Lal's petition with the scheme we find that the petition discloses nothing beyond what was stated in the proposed scheme that was sent to him by 5 out of the 20,000 shareholders of D. J. Airways, shareholders, who, as we have seen, were nothing but a disguise for R. Dalmia. All that C. P. Lal did as liquidator was to take the scheme to the court and leave it to the shareholders and the court to declare whether it should be sanctioned. That is not the conduct expected of an independent liquidator and certainly not of one who certifies that he has "carefully examined" the proposed scheme and "recommends it for the consideration of the court and the shareholders".

From there we pass on to 31-2-1952. The scheme was considered at a meeting of the general body of shareholders on that day. C. P. Lal was present and addressed the meeting and so did R. Dalmia. The scheme was then formally approved by the meeting.

It was approved by the court on 10-2-1953 in the presence of C. P. Lal (Ex. 12).

Lal was appointed on a remuneration of Rs. 52,500 but in view of the amalgamation he agreed to forego Rs. 20,000 and only charged Rs. 32,500, but even so, as he worked for only months from 13-6-1952 to 13-2-1953 the fee that he earned works out to cover Rs. 4,000 a month, that is, between 2½ to 3 times his normal income; and what he was promised was more than double that. His income at that time was Rs. 15,000 to 20,000 a year, so this was very adequate remuneration for the little that he was expected to do as liquidator, especially as he admitted that he had no previous experience of companies liquidation.

Now one of the things that a liquidator was supposed to do under section 235 of the Indian Companies Act, 1913 (the Act that was then in force) was to ask the court to examine into the conduct of any promoter, director or officer of the company under liquidation if certain improprieties or wrongs would appear to have been committed by them.

We have seen that to the knowledge of C. P. Lal an amount of Rs. 2,44,25,417-1-0 was transferred to D.C.P.M. under Ex. 5, supposedly on 5-8-1951. The trial balance of D.J. Airways as on 13-6-1952 (Ex. 6) showed that in addition to the debt thus taken over (supposedly on 5-8-1951). D.C.P.M. owed D.J. Airways another Rs. 99,53,506-9-5 on its own account bringing the total indebtedness up to Rs. 3,43,78,923-10-5. It was, therefore, evident that D.C.P.M. had not paid D. J. Airways anything between 5-8-1951 and 13-6-1952. This is a matter that, on the face of it, required looking into. But no inquiry was made nor was the court apprised of the situation.

Then, again, as we have seen, the only assets of D.J. Aviation on the date of the meeting were the cash and bank balances of Rs. 3,554-12-0 and the unsecured indebtedness of D.C.P.M. amounting to Rs. 99,93,963-15-6. The date of the meeting was 31-2-1952.

Now one of the purposes of the liquidation was to get the books of D. J. Airways out of the way so that they could be destroyed. We will now examine that and see how C. P. Lal was a party to this too.

CHAPTER VII

DESTRUCTION OF ACCOUNT BOOKS

In an earlier part of our report we put our finger on a number of specific frauds, manipulations and irregularities. If the books of these various companies could be seen most of this would either be proved or disproved. It is obvious that if the books disproved the allegations that were made from time to time they would at once have been produced. But N. C. Roy said in his letter Ex. 268/23 dated 1-5-1951 that they could not be shown to the income tax authorities and explained why. The papers that N. C. Roy referred to related to the disposal vehicles and cover part of the joint venture business. It is obvious that D. J. Airways would also have documents relating to the same matter and that their disclosure would have been as disastrous to those interested in hiding the facts as the production of Allenberry's books. Therefore, it was clearly desirable from their point of view to destroy the lot; and that was one of the aims of the liquidation.

Another reason for the destruction was that the Inspectors said in their report that they had discovered a number of frauds and irregularities. Civil and criminal proceedings might well have followed as a consequence, and in particular misfeasance proceedings in respect of Ex. 5 under which the assets of D. J. Airways were transferred to D.C.P.M. at half the cost.

It was also necessary to place the books beyond the reach of the income tax authorities in India. It seems that they were wanted by them because C.P. Lal told us that he first learned about the destruction from them.

The material facts that led up to the destruction are these :

As we have seen Allenberry's outstandings against D. J. Airways were Rs. 1,35,25,417-1-0 on 30-6-1951 (Ex. 26/18). These outstandings were transferred to D.C.P.M. under Ex. 5, supposedly on 5-8-1951, and D.C.P.M. undertook to pay within 19 years without interest. D. J. Airways also transferred shares of the value of Rs. 1,09,00,000 to D.C.P.M. at a time when D.C.P.M. itself was indebted to D. J. Airways to the extent of Rs. 90,35,318 (Ex. 26/17) and could not pay.

These and other facts led to the appointment of Inspectors on 7-6-1942; and within 6 days of the appointment, namely, on 13-6-1952, D. J. Airways was taken into voluntary liquidation; and we have seen how the investigation was thwarted and that the accounts of the joint venture have not been disclosed to this day.

As late as 7-7-1952, the liquidator C.P. Lal wrote to the Registrar and asked him to tell the Inspectors to "wait" and "not to come" to the office for inspection (Ex. 150).

Between 2-11-1952 and 16-11-1952 a scheme was evolved and negotiations were carried on between D. J. Airways and D. J. Aviation regarding a proposal under which all the "assets" of D. J. Airways were to be

transferred to D. J. Aviation subject to sanction of the proposed scheme by the court (Ex. 8 and 9).

On 20-11-1952 the Inspectors specifically asked the liquidator for the books relating to the *joint venture account* and complained that they had not been produced up till that time. (Ex. 180).

In December 1952 R. Dalmia held 19,62,275 shares of D. J. Airways while the public held only 15,37,725, therefore, R. Dalmia controlled D. J. Airways at that time though the investing public still held a very substantial interest in the company.

On 3-12-1952 D. J. Airways and D. J. Aviation proposed a scheme of amalgamation under which "*all assets*" of D. J. Airways shall be transferred (Annex. A to Ex. 10). The liquidator endorsed this and asked the court to sanction the scheme. But he did not reveal to the court, either then or at any time, that Inspectors had been appointed to investigate into the affairs of D. J. Airways and had submitted their report a few days earlier.

On the same day the court made an order directing that D. J. Airways should not be compulsarily wound up.

On 3-12-1952 the proposed scheme of amalgamation (Annex. A Ex. 10) was passed at a meeting of the shareholders of D. J. Airways. The resolution (Ex. 11) said that:

"*all the assets* of D. J. Airways shall be transferred."

The court ordered three meetings to be held. They were all held on the same day, one at 10 a.m., one at 3 p.m. and the third at 4 p.m. (Ex. 11).

In addition to approving the scheme the following resolution was also passed,

"It would be unfortunate and regrettable if there is *any* interference with the *past* affairs of the company from *any quarter* and that such interference will be detrimental to the best interests of the general body of shareholders."

The liquidator C. P. Lal and R. Dalmia were both present at these meetings and both made speeches. It is obvious that that resolution was yet another attempt to shut out any probing into the affairs of the company.

On 10-2-1953, the court made an order (Ex. 12) sanctioning the scheme of amalgamation set out in Ex. 10 but it omitted to make an order vesting the property in D. J. Aviation. G. Ramachandran (W. 8) told us that preparations for handing over the property and assets to D. J. Aviation started from this day. Ramachandran was a stenographer in the pay of D.C.P.M. and was also a director of D. J. Aviation and was also in the service of R. Dalmia. He was authorised to take over charge on behalf of D. J. Aviation.

In view of the lacuna in the court's order the liquidator made an application to the court asking it to direct a transfer of

"the *whole* of the *property* of D. J. Airways to D. J. Aviation" (Ex. 13).

The court made the amendment on 13-2-1953. The day before this the liquidator wrote to D. J. Aviation asking it to take over all the assets "*and the records* (Ex. 11 and 19).

Now there is a dispute whether this letter was written on the 12th or the 13th. The date on Ex. 19 is the 12th while the copy retained by the liquidator (not a carbon copy) bears date the 13th though it was originally dated the 12th. The figures "12th" have been overwritten and changed to "13th".

The point of this criticism is that if it was written on the 12th then it was written before the court made the necessary orders. C. P. Lal admitted that he might have written the letter on the 12th in anticipation of the court's order.

This is not of much importance because there was nothing inherently wrong in acting with despatch and keeping things ready, but it does serve to show the sense of urgency under which they were all labouring and contrasts unfavourably with C. P. Lal's attempts to stave off inspection: there was nothing prompt about that. The reason here of course was that they wanted to put the books beyond the reach of further scrutiny as a result of the Inspectors report.

It is, however, significant that not only has the date in Ex. 15 been overwritten and changed but that neither Ex. 15 the copy, nor Ex. 19 the original, has been numbered. C. P. Lal admitted that it was his practice to number all his letters, so this was a departure from the normal practice. It will be remembered that contrary to the usual practice the sale bill (Ex. 130) relating to the 2323 vehicles also happened not to bear a serial number, and that the journal vouchers (Ex. 297 and 296) had to be numbered 96 and 96A because two vouchers could not be inserted between Nos. 95 and 97 if the correct sequence of dates was to be followed.

Another matter that bears out the sense of urgency that impelled them is the letter (Ex. 20) that C. P. Lal wrote on 13-2-1953,

"Please therefore make *immediate* arrangements to send someone to take over charge from Shri Gursaran Lal who is being directed to hand over *as soon as a person deputed by you reaches Dum Dum.*"

Anyway, whether Exs. 15 and 19 were written on the 12th or the 13th, there is no dispute about the fact that the courts order was passed on the 13th (13-2-1953).

C. P. Lal says that he was informed over the telephone about 11-30 that the order had been passed and that he received a copy of the order "some time before lunch."

After that things moved swiftly. First a meeting of the Board of Directors of D. J. Aviation was held at 4-30 p.m. to authorise G. Ramachandran (one of the directors) to take over the assets.

The meeting was obviously convened at short notice—a couple of hours at the outside, because nobody could have anticipated between the 11th, when the application (Ex. 11) for amendment was made and the 13th, when the order (Ex. 19) was passed, that the court would make an order on the 13th morning. So it is clear that all was kept in readiness even to the holding of the meeting.

The liquidators office was in the same room as that of the office of D. J. Aviation where the Board meeting was held, but C. P. Lal was present in the D. J. Aviation office room while the meeting was held and stayed on till it finished and he was there ready to hand over to Ramachandran as soon as the meeting was over. According to Ramachandran the meeting lasted about an hour; and it must have been so because the minutes of the meeting run into six typed sheets of foolscap.

Shortly, after its termination G. Ramachandran says that S. N. Dudani and he contacted the liquidator, who was still in the room, and handed over a letter of authority (Ex. 16) authorising the liquidator to hand over charge to G. Ramachandran. The letter is signed by S. N. Dudani who was the secretary of D. J. Aviation.

Now this letter (Ex. 16) purports to be a reply to C. P. Lal's letter of the 12th (Ex. 19). It says

"With reference to your letter *dated the 12th instant* we are deputing Shri G. Ramachandran of director on behalf of the Board of Directors to take charge of the assets *and records* of Dalmia Jain Airways.

We hope you will please give charge *today*."

If C. P. Lal wrote his letter on the 13th after receiving the court's order then he received an exceedingly prompt reply. Anyway, it is obvious that everything had been kept ready and all that was necessary to see the machinery in motion was for the court to press the button. G. Ramachandran admitted that

"We knew at the Board Meeting that the preparations for handing over were almost complete."

Another point to notice is the stress on the word "records". We do not dispute that the word "assets" in the court's order includes the records of the company and that the addition of the words "and records" was unnecessary; but the fact that it was added underlines their anxiety about them.

As soon as C. P. Lal received this letter he began the process of handing over. The evidence of Lal and G. Ramachandran, who took over charge from Lal, do not agree about the time; but whichever version is accepted there can be no doubt that it was done in a hurry.

According to C. P. Lal, S. N. Dudani telephoned him and said that G. Ramachandran had authority to take over charge and he says that Ramachandran delivered the authority (Ex. 16) in person at about 2 p.m. Then about 4 or 5 in the evening Ramachandran gave him the receipt Ex. 17 stating that he had received complete charge of the assets and records. The receipt also says,

"We have also satisfied ourselves that all the assets of Dalmia Jain that came into your hands as voluntary liquidator have either been transferred to us or properly accounted for in the books of accounts given to us."

G. Ramachandran said that he did not agree with C. P. Lal about the time. He said that he knew nothing about the telephone message and that he came late in the evening to take over charge and that he handed over the

receipt Ex. 17 between 7 and 8 O'clock and not between 4 and 5 as C. P. Lal had said. But he ended up by saying :

"I made my earlier statement about the time etc. according to my memory. If my memory has failed.....then Mr. Lal's evidence regarding the time of taking over as stated by him would be correct."

We think Ramachandran's evidence is more likely to be right because he gives details that we do not think could have been invented on the spot and because he is corroborated by the minutes of the Board meeting (Ex. 56/28) held on that day. Ramachandran said that the taking over charge was after office hours and said,

"There was no difficulty about that because for some special purpose the office can be kept open till later."

The Minutes of the Board meeting (Ex. 56/28) show that the meeting was held at 4-30 p.m. Both Lal and Ramachandran are agreed about the sequence of events so Lal cannot be right when he says that he received Ex. 16 at 2 O'clock and Ex. 17 between 4 and 5 p.m.

Ramachandran said that Lal gave him a list of the contents with the keys of the safe. He checked up the contents with the list and satisfied himself that everything mentioned in the list was there. That took about 15 minutes.

"Then I put the records back in the safe and locked up".

After that he asked the Secretary (Dudani) to satisfy himself and check the other records.

"Dudani went to the staff who were already there and in possession of the records and said that they were all right. This process took between 15 to 20 minutes but not exceeding half an hour."

Then the receipt Ex. 17 was typed. Ramachandran signed it and gave it to the liquidator and "left in the evening between 7 and 8 O'clock".

Then we come to this passage in Ramachandran's evidence.

"Mr. Petigara states, I put it to you that all these letters and papers, namely Exs. 15, 16 and 17 and the signature of 18 were signed at the same time by S. N. Dudani, C. P. Lal and you. After considerable hesitation the witness replies. I say again that if my memory failed me this would be the fact. The witness is again asked, is it a fact that you all signed at the same time. He again hesitates and says this must be the fact. As far as I remember I am making these statements in accordance with truth."

Now we get an idea of what the task of handing and taking over charge entailed from various sources.

1. When the Inspector asked C. P. Lal on 29-8-1952 (Ex. 157) to be shown a very limited set of books to start with, namely,

- (a) the cash book,
- (b) ledgers, and
- (c) vouchers;

for the first financial year alone, that is for the year ending 30-6-1947, Lal replied that they could not take inspection before the 2nd of September, because he proposed to sign them at various places for purposes of identification and "this will take time". The time that he required for this was the whole of the 30th and up till 2.30 p.m. on the 2nd. (The 31st and 1st were holidays). So even such a simple routine matter as signing "at various places" for purposes of identification was a time consuming process that had to be carefully and minutely attended to.

2. When the inspectors asked on 15-11-52 for the information that they had asked for on 11-11-52 regarding the air section C. P. Lal's reply (Ex. 179) was that

"the records of the air section partly lay dumped in a mass and partly were to be collected from Calcutta."

and that therefore preparation of the information that the inspectors wanted "would naturally take time."

This letter was dated 17/18 November, 1952 and a week had already elapsed, so the books were evidently so numerous that even a weeks' time was not enough to gather *any* of the information that had been asked for on the 11th for it will be realised that unless that was the case the information could have been supplied in instalments.

3. When C. P. Lal took over the "assets and records" of the company he said that it took him "several months" though he said that "I did not make an inventory myself because the list had been suggested to me and I had got checked." So even checking an existing list required months of work.

4. C. P. Lal also tells us that

"There was a huge office containing a large number of documents, registers, etc. They ran into thousands and thousands and some 50 persons were working in the office."

5. In view of that Lal was asked how Ramachandran could have satisfied himself about the books and assets in such a short time and he replied.

"I am not able to say how it was possible for Ramachandran to satisfy himself about the *thousands of thousands of papers that were handed over to him.*"

That gives an idea of the voluminous nature of the task. It will also be remembered that in the receipt Ex. 17 given by Ramachandran he said that he was satisfied that all the assets that came into the hands of the liquidators were either transferred to him or were "*properly accounted for in the books of accounts given to us.*"

G. Ramachandran also told us that

"the assets were, some stocks in Calcutta, some cash balances in the bank *and some moneys owing from D.C.P.M.* It was about Rs. 343 lacs or so."

The way that he satisfied himself about this Rs. 343 lacs was as follows,

"The liquidator had made a trial balance *as on the date of taking over*" (that is on the very date of the courts' order, the Board meeting and of the handing over charge) "and this sum was entered there."

There was no attempt to check whether the trial balances were correct even though as much Rs. 343 lacs was involved.

We need not pursue this further. There can be no doubt about the haste and no doubt that the handing over was a farce. The only object was to spirit away the books as fast as that could be done. All we need say is that we agree with G. Ramachandran when he said,

"we knew at the Board meeting that the preparations for handing over were almost completed."

And again when he said in answer to a question that asked him why there was so much haste,

"As preparations were already almost complete I presumed it was considered expedient to take over charge that day itself even after office hours."

It is clear that everything had been well thought out. All that remained was to sign a few papers like Exs. 15, 16, 17 and 18 on the dotted line all at one sitting. There was no real check and there was no proper taking over charge.

We now pass on to the destruction of the records. The handing over charge took place on 13-2-53. On 25-3-53 the Board of Directors of D. J. Aviation passed the following resolution authorising the destruction of the books (Ex. 56/34).

"The Secretary is hereby directed to see that such of the aforesaid records as may be needed for settling the claims of the shareholders of the transferor company in terms of the order of the court should be preserved as long as may be considered necessary by him and unnecessary records may be disposed of by him as he may think proper."

G. Ramachandran said that some records were kept, but we find that everything of any value was destroyed.

Now one thing is clear, namely, that R. Dalmia was the moving force behind these destructions. P. S. Patke, who was R. Dalmia's secretary and also a director of D. J. Aviation at those dates was present at a talk between S. N. Dudani and R. Dalmia and remembers that Dudani told Dalmia that "some records were not required." He does not remember Dalmia's answer but he says that "some records were later burnt and destroyed." He also admitted that there was a talk between S. N. Dudani, R. P. Gurha and himself "as a representative of R. Dalmia" about what records should be destroyed. Then he said,

"I would not have done anything without consulting R. Dalmia. I simply conveyed the messages from R. Dalmia. It was decided by us that *lists should be kept* of books that were to be destroyed and of those that were not to be destroyed. *R. Dalmia directed this and I conveyed that to the others.*"

Patke also said,

"No important papers could have been destroyed without the express sanction of the D. J. Group."

One of the more glaring instance of documents that were destroyed and which should not have been destroyed is as under :

At the date of the amalgamation D.C.P.M. owed D. J. Airways Rs. 3,44,19,281-9-6 under the agreement, Ex. 5, that is supposed to have been executed on 5-8-61. Even if that is the correct date, and even if limitation is taken to be 3 years from 1951, the three years had not expired in 1953 when the documents were destroyed; so even a layman would have known that the claim was within the limitation. As a matter of fact, limitation would have continued for at least another 19 years (from 1951) because of the instalments. But all papers relating to this agreement were destroyed *including the original of the agreement Ex. 5.*

Now there would have been a large number of documents to substantiate this claim; bank books, cheques, pass books, slip books, ledgers, journals, cost books and vouchers. But they were all destroyed. How can that be justified?

It is not necessary to go further and look into smaller items. This in itself is enough to show want of good faith. No honest business company making a *bona fide* amalgamation would have acted in this way.

Registrar of Companies.

We said earlier that there were many disquieting features about this liquidation and indicated that one of them touched on the conduct of the Registrar of Companies. We will deal with that.

The scheme of arrangement was passed by the court on 10-2-53. As we have seen, most of the material facts were not discussed, so the Registrar of Companies put in an application to the court asking to be joined as a party to enable him to oppose the scheme. The matter was considered to be so important that the Solicitor General was engaged to appear and press the application. The application was allowed on 14-2-53 and the Registrar was joined as a party.

In the meanwhile one Kamla Devi had filed an appeal to the Punjab High Court. Soon after, on 20-4-55, another party Sajmati, applied to be substituted as an appellant in place of Kamla Devi on the ground that Sajmati apprehended that the original appellant (Kamla Devi) might withdraw and not press her appeal. The fear was that Kamla Devi had been "bought off" by R. Dalmia.

The Punjab High Court sent notices of the appeal to the Registrar and enclosed Sajmati's application for substitution which said,

"The Registrar of Companies also applied for being impleaded in the appeal since he also felt opposed to the scheme of arrangement in question and he has been joined as a party."

"The Registrar of Companies has entered as guardian of the commercial morality and in the interests of the shareholders. Under the above circumstances Dalmia and his people have tried to win over all the appellants by paying them off so that their illegal and dishonest activities by which crores of rupees of the public have been misappropriated and misapplied by them might not come to light and the scheme of arrangement get through."

But after this the Registrar failed to appear despite the notices sent to him. Kamla Devi was examined by the High Court on 5-3-56 and the appeal was heard on 13-3-56. As no one appeared to press the appeal it was dismissed.

Now it is not necessary to determine whether the Registrar was incompetent, negligent or dishonest; but it is our duty to find out how shareholders can be defrauded despite a number of seemingly adequate safeguards and to see whether the safeguards really are as effective as they appear to be on paper; and, if possible, to suggest remedies. What is clear is that the then Registrar of Companies was no better as a watchdog than the Liquidator. Knowing all the facts and having made a great effort in the teeth of strong opposition to be added as a party, and knowing that the allegation was that R. Dalmia was "buying off" the opposition, he did not turn up when the case was called. If that is all the trouble that Liquidators and Registrars of Companies take when such heavy interests are at stake there would seem to be no point in having them.

There is no doubt that C. P. Lal played R. Dalmia's game from start to finish; and there is no doubt that he was in close touch with him throughout. We have his own guarded admission that he did consult R. Dalmia when necessary and the corroborative details that we have examined to establish this fact. It is true that, according to him he never telephoned Dalmia in the first instance. The procedure was to contact Dalmia's nominees R. Sharma and M. R. Jain first. Then they would speak to Dalmia and finally Dalmia would telephone Lal. But whether Lal spoke to Dalmia first or got Dalmia's intermediaries to do that for him the practical effect the same. No independent liquidator properly exercising his functions would have acted as Lal did; and no competent liquidator would have parted with the books of the company without making adequate provision for their safety when,

- (a) inspectors wanted to see them;
- (b) as much as Rs. 343 lacs were owing to shareholders of D. J. Airways from D.C.P.M.; and
- (c) D. J. Aviation's ability to pay the shareholders of D. J. Airways depended on D. J. Aviation's ability to recover its own debt from D.C.P.M. because D. J. Aviation's only cash asset was Rs. 10,000 and the rest consisted of the unsecured indebtedness of D.C.P.M.

It was almost criminal negligence in the circumstances to allow all the evidence there was to establish D. J. Airways claim against D.C.P.M. to be handed over without any provision for its preservation and safety; or at any rate till the shareholders of D. J. Airways had been paid.

We have little doubt that C. P. Lal and R. Dalmia acted in concert in this matter. We infer this from the following facts,

- (1) a transferee company cannot destroy the books without the consent of the transferor company. Section 242 of the then existing Companies Act provided that in the case of a voluntary winding up the documents of the transferee company are to be disposed of in such a way as the transferor company by extraordinary resolution directs. The shareholders of D. J. Airways were not consulted about this matter and there is no resolution from their side;

- (2) but whether section 242 applied here or not the principle underlying it is just ordinary business practice and caution; and C. P. Lal should not, in the circumstances of this case, have handed them over unconditionally. The circumstances referred to are;
- (3) that the inspectors were insisting on the production of the joint venture books and that this was a material fact that a person in the position of a liquidator was bound to disclose either to the court or to the transferee company;
- (4) that the liquidator was also bound to tell both the court and the transferee company as also the shareholders of D. J. Airways that the books contained the evidences of D.C.P.M.'s indebtedness and should therefore be preserved because the ability of D. J. Aviation to pay D. J. Airways depended upon its ability to recover its own debt from D.C.P.M. and in the event of D.C.P.M. defaulting the evidence contained in these books would be vital. A sum of over Rs. 343 lacs was involved and it was criminal to treat the whole thing so casually;
- (5) the haste with which the whole thing was carried through;
- (6) C. P. Lal's behaviour towards the Inspectors; and
- (7) C. P. Lal's consultations with R. Dalmia from time to time and the identity of their behaviour at the various meetings of D. J. Airways.

We have no evidence on which we can conclude that the Registrar of Companies was privy to this conspiracy but *so far as our inquiry is concerned*, it does not matter whether he was dishonest or negligent because the practical effect *for our purposes* is the same. All we are concerned about is that unless steps are taken to check both negligence and dishonesty in Liquidators and Registrars of Company they might just as well not be employed.

In our opinion a fraud was practised on the shareholders of D. J. Airways, against government and on the court.

CHAPTER VIII

DEFENCE OF C. P. LAL

We now turn to C. P. Lal's arguments in defence of his action and in repudiation of our charges against him. He was represented by Mr. K. S. Hajela.

The first point that Mr. Hajela took was that in considering whether there was a conspiracy between C. P. Lal and R. Dalmia it will be improper to take into consideration anything that happened before C. P. Lal is said to have joined the conspiracy; and the earliest date given for that by us is C. P. Lal's interview with R. Dalmia soon after his appointment as liquidator on 13-6-1952.

We agree; and we do not intend to use evidence of prior events against Lal to suggest that he was associated with them or that he concurred with them. But his knowledge about improper past events even though subsequently acquired can be used to show that his conduct was not innocent.

A conspiracy can seldom be established by direct evidence. It often has to be proved by circumstantial evidence. The circumstances against C. P. Lal are, ,

- (1) the opportunity : that is shown by his own admission that he went to R. Dalmia's house soon after his appointment and had a conversation with him;
- (2) that the conversation related to the liquidation and included the then pending investigation by Inspectors appointed by Government and the charges made against R. Dalmia about his mismanagement of the company by some of the shareholders;
- (3) the fact that Lal was promised a remuneration of Rs. 52,500 for his services as liquidator;
- (4) his conduct in, almost immediately thereafter;
 - (a) thwarting an investigation by the Inspectors;
 - (b) in putting forward without any material a scheme for the consideration of the court which was, to all intents and purposes a carbon copy of the scheme put forward by R. Dalmia before his appointment;
 - (c) keeping material books and vouchers out of sight;
 - (d) in deliberately refusing to look into the very serious allegations of mal-administration despite his knowledge of past improper events;
 - (e) keeping material facts in his knowledge from the courts and the shareholders; and
 - (f) dancing generally to R. Dalmia's tune; also.

- (5) keeping in telephonic contact with R. Dalmia during the progress of the liquidation and in associating with him and supporting him with a scheme that he says he never looked into, at two shareholders meetings;
- (6) his conduct in handing over the books to D. J. Aviation without any reservation about preservation of material documents despite apprehensions raised to his knowledge that the books would be destroyed; also his application to the court asking it specifically to include the records of the company among the assets that were to be handed over;

(7) the very unusual manner in which this was done and the haste; all of which, coupled with the other circumstances to which we have referred adds up to an impressive array of facts against him.

The more impressive part of Mr. Hajela's argument was that the District Judge considered all these matters and so did the Solicitor General; and as they were satisfied that there was nothing in the allegations about mismanagement, and as they thought that the scheme was really for the benefit of the shareholders, how can Lal be blamed for reaching the same conclusion.

The difference lies in this. Lal had all the relevant information in his possession while the court and the Solicitor General did not; nor did they know that such material existed.

So far as the court is concerned it has to be remembered that the normal function of a court is to adjudicate and not to investigate. It has neither the machinery nor the time for the latter. The investigation into the facts is done by the parties or by other agencies. The facts disclosed by these investigations are then laid before the court and the court decides the issues that spring out of the matter placed before it. Therefore, unless either the parties or the agencies set up for the purpose of assisting the court do their duty the court is not in a position to reach a proper decision. We have little doubt, if we may say so with respect, that on the material *placed before the court* the decision could hardly have been otherwise. In any case, it is not for us to sit in judgment over a court of justice, nor do we presume to do so. But it is our duty to find out how courts can be misled and, if possible, to suggest remedies to prevent that from happening again. In our opinion the full facts were not placed before the court in spite of all that Mr. Hajela said.

Before we deal with that we will pause to observe that part of the machinery of the law devised to assist the court in matters of liquidation is the liquidator. It is his business and function to look into these matters and place the relevant facts before the court. But what was Lal's attitude? He told us in the witness box,

1. "I did not bother to look into the matter of recoveries from D.C.P.M."; and yet as we shall show later he did ask for permission to pursue litigations against others;
2. "I read the documents but did not take any action on them";
3. "I made no enquiries whether D.C.P.M. was capable of carrying out the agreement Ex. 5";
4. "I thought it proper to wait for the Report" (i.e. the audit report of Sodhbans) before I took any action; but he did not think it necessary to ask the court to wait for the report before sanctioning the scheme;

5. And when he did receive the report he said,

"I did not make any attempt to consider the report because the court sent me the scheme within 10 or 15 days of the receipt of the report and there was no time." But what was the hurry? What difference would a few days have made?

6. "I did not consider it my duty to make enquiries about the reasonableness of the agreement."

He refused to look into anything suspicious or which might tell against R. Dalmia or the management of D. J. Airways and when others tried to do that he stopped them as much as he could and thwarted them.

In the course of his arguments Mr. Hajela said,

"If any one was responsible for hiding the facts from the court it was the Registrar and Mr. Chopra".

There is justification for this criticism except that Mr. Chopra had nothing to do with it. Government was asked to produce Chopra's report and it refused to do so under a plea of privilege that is hard to understand. But that is no excuse for Lal's conduct. He admitted in the witness box that beyond the application that he made to the court,

"I discovered nothing further to the court."

Just what was he expected to do for his remuneration of Rs. 52,500? Sit back and expect others to do his work for him. Or just to put forward a carbon copy of a scheme that R. Dalmia had prepared, get the court to accept it and then get rid of the books as fast as he could? His bearing and conduct leave little room for any other conclusion.

One could have understood and sympathised with a *bona fide* error of judgment made after an honest study of the facts. But to accept a job for Rs. 52,500 and then say that it was no business of his to look into anything that was material, and to go out of his way to thwart an investigation and to do only the things that Dalmia wanted, dispel any inference of good faith.

It was then urged that in point of fact the District Court had all the material that was required before it and so there was no need for Lal to duplicate the process. Reliance was placed on the order of the learned District Judge.

What happened before the learned judge was this. Everybody who appeared before him agreed that the company was not in a position to carry on a profitable business. But a careful examination of the accounts would have revealed that the joint venture business was profitable and that the agreement to terminate it was fraudulent. But how can a court know that if everybody who appears before it, including the liquidator, assures the judge that the company is not in a position to carry on its business profitably.

An allegation to the contrary was made by two shareholders. But they held a very minute fraction of the total shareholding, and in the absence of access to the records they were not in a position to establish these facts.

And what did the liquidator do? Having been promised Rs. 52,500 for his labours he told the court—we quote from his written statement—that he gave an assurance to the court,

“that *he did not propose to do anything* for the present except take charge of the company’s assets.”

He took shelter behind this to say that after that undertaking it would have been improper for him to do anything.

But we find from the order of the court dated 4-8-52 that the undertaking was not to do anything “towards the *winding up* of the company.” That would not have prevented him from looking into the affairs of the company. But that apart, we find that he asked for permission to do a number of things, among them, to pursue certain litigations and to transfer certain shares. He could as easily have asked for permission to look into the allegations made by the shareholders and could and *should* have asked the court to stay the hearing of the application for compulsory winding up until he had had a chance to look into the matter, especially in view of the fact that government had directed an investigation. If the court had been told that, of course it would have passed appropriate orders.

Then what did he do in respect of the proceedings then pending for the compulsory winding up of the company? Instead of either appearing himself or appointing some disinterested counsel to appear he told us that he gave his vakalatnama to the counsel appearing for the *company*!—that is, to the very man whose business it was to defend and shield the company from the allegations made against it; and the “company” of course, means R. Dalmia.

Lal justifies himself by saying,

“Even in the liquidation case before the District Judge the respondent refused to defend the various allegations of fraud against the ex-directors of the company *but left that to be dealt with* by its *Secretary*.”

His duty under section 235 of the then Indian Companies Act was neither to defend the ex-directors nor to refrain from defending them. His duty was to see whether there was any truth in the allegations made against them and to “examine into their conduct.”

We have seen that the shareholders of the company made allegations of mismanagement against the company and asked for a compulsory winding up. And how were these allegations sought to be proved?—by calling R. Dalmia and J. Dalmia into the witness box and expecting them to depose against their own mismanagement? Very naturally, in those circumstances the learned District Judge said,

“No fraud is brought to light nor improper conduct amounting to fraud.”

What else could he say?

Reliance was also placed on the fact that the Solicitor General appeared on behalf of one of the shareholders and, except for the one modification to which the court agreed, accepted the scheme on behalf of his client. But the Solicitor General was appearing for a particular party and not for the

general body of shareholders. His duty was to his client, and in that he was in the same position as any other counsel appearing for a private party. We do not know what instructions he received from his client but it is understandable that a given person might, for purely personal reasons, e.g., being pressed for money, prefer an immediate bird in the hand to a problematical two in the bush. It is conceivable that his client was in no position to fight the matter or conduct an investigation into the affairs of the company. In that event the Solicitor General, would have been bound to adopt the attitude that he did. Unless we know all the circumstances it is impossible to draw any inference one way or the other from the fact that the Solicitor General, acting on behalf of a particular client, accepted the scheme subject to the modification that he proposed. The position of C. P. Lal was very different.

Reliance was also placed on the fact that four appeals were filed against the orders of the District Judge and that the High Court dismissed them all. C. P. Lal said that,

“under the circumstances.....the orders of the court....were ultimately *held to be correct* by the High Court.”

This is only a half truth because the High Court did not inquire into the facts or form a decision on the merits.

New Delhi.
15-6-62

New Delhi.
15-6-62

Bombay.
16-6-62

New Delhi.
15-6-62

(VIVIAN BOSE) (V. R. SEN) (N. R. MODY) (S. C. CHAUDHURI)



VOLUME V

DALMIA CEMENT
&
PAPER MARKETING
COMPANY LIMITED

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CHAPTER I

INTRODUCTORY

The Dalmia Cement and Paper Marketing Co. Ltd. (D.C.P.M.) for short) was originally incorporated under the name of "The Indian Cement and Paper Marketing Co. Ltd." in the then Province of Bihar in October 1937, with an authorised capital of Rs. 1 crore made up of 50,000 Cumulative Preference Shares of Rs. 100 each, 400,000 Ordinary Shares of Rs. 10 each and 10,00,000 Deferred Shares of Re. 1 each (Ex. 537). The paid up capital was Rs. 50 lakhs made up of 25,000 Cumulative Preference Shares of Rs. 100 each, 2,00,000 Ordinary Shares of Rs. 10 each and 5,00,000 Deferred Shares of Re. 1 each (Ex. 537).

On 27th May 1938, the name of the company was changed to D.C.P.M. The Signatories to the Memorandum of Association were Shanti Prasad Jain, Smt. Rama Jain (wife of Shanti Prasad Jain), V. D. Agarwal, J. M. Gupta, H. D. Bishnoi, J. K. Saraf and Mahabir Prasad Jain.

The first directors were Shanti Prasad Jain, and V. D. Agarwal.

The main objects, amongst others, for which the company was floated were as under :—

1. To lend money and negotiate loans to form, promote, subsidise and assist companies, syndicates and firms of all kinds.
2. To carry on and undertake any business undertaking, transaction or operation commonly carried on or undertaken by bankers, capitalists, promoters, financiers, contractors, merchants and any other business.
3. To acquire and undertake the whole or any part of the banking and discount business of any person or company carrying on any business.
4. To act as trustees, executors, administrators, attorneys, nominees and agents and to undertake and to execute trusts of all kinds and to exercise all the powers of custodians, trustees and trust corporations.
5. To promote, effect and undertake any issue of shares of any company or loans.
6. To establish and maintain any agencies in any part of the world for the purchase, sale and acquirement of any materials or things.
7. To promote or finance or to assist in promoting or financing any business undertakings and industries of any description either existing or new and to develop and form the same either through the instrumentality of syndicates or otherwise.

This company played a very important and dominant role amongst the companies under the control of the D. J. Group and R. Dalmia especially in regard to the companies whose affairs have been investigated into by the Commission. There were transactions between D.C.P.M. and each one of

the companies under investigation and it served as a very important link between the other companies of the group.

By reason of the inter-locking of funds and common control, the D. J. Group, and later R. Dalmia, used the company as a 'Financial Agency' for the purpose of (a) borrowing large sums of money from Banks and Insurance Companies and other public companies, with or without security; (b) diverting such borrowed funds to one or more of the several companies in the Group, or R. Dalmia companies, or to one or more members of the Group; (c) for investing in shares of sister companies; and/or (d) acquiring or retaining the control of the Group and later R. Dalmia over such companies.

D.C.P.M. frequently acted as a 'Broker' or 'Agent' for buying and selling shares and/or securities for and on behalf of the companies under the control of the Group and later of R. Dalmia. Also by its appointment as 'underwriters' D.C.P.M. received Rs. 7,86,955 as underwriting commission from D. J. Airways Ltd., in which the investing public were mostly interested.

D.C.P.M. also acted as selling agents for S.S.B. Mills Ltd., and M.D.M. Co. Ltd, two of the scheduled companies under investigation, and also of Rohtas Industries Ltd, S.K.G. Sugar Ltd., and Dalmia Cement etc.

So far as the two mill companies are concerned, by a purported breach of the selling agency agreements, D.C.P.M. later drew out Rs. 46,90,000 as compensation.

Inter-locking of control and funds also enabled the D.J. Group, and later R. Dalmia, suitably to control and manipulate its profits from the different companies of the Group or R. Dalmia and thereby reduce the overall tax liability. For instance, large profits were diverted from the Joint Venture and other business of Allenberry & Co Ltd., to D.C.P.M. to be set off against its losses; which losses had been created by artificial transactions of purchases and sales of shares. In other words, fictitious losses were created in D.C.P.M. to be set off against the taxable profits diverted from the other companies.

Though D.C.P.M. carried out its function within the ambit of its Memorandum of Association, it is significant that all its activities, so far at least as the material before the Commission shows, centred round the various companies in which either the D. J. Group or R. Dalmia were interested.

After using the Corporate existence of D.C.P.M. for achieving the purposes briefly indicated above, R. Dalmia, who was then in full control of D.C.P.M. and also its sole beneficiary, decided to put an end to its existence. Following the usual pattern, D.C.P.M. was converted from a public limited company to a private limited company on 10-4-1952; and on 18-2-1953 it was taken into voluntary liquidation; its assets were transferred to another sister company, Delhi Glass Works Ltd., by having recourse to section 153 and 153-A of the Indian Companies Act, 1913; and thereafter its books and records were destroyed. This was done with a view to avoid and obviate possible proceedings, civil and/or criminal, as a result of the investigation into its affairs under section 138 of the Indian Companies Act, 1913.

CHAPTER II

CONTROL

Control over D.C.P.M. was exercised by the D. J. Group, and later by R. Dalmia by appointing their own relations and/or employees, as directors of the company. These directors were subservient to them and they were not in a position to exercise independent control. This was admitted by a number of them (P. S. Patke, S. R. Srivastava, Jagmohanlal Raizada, H. D. Bishnoi and others) and also proved by the evidence. None of these directors had any personal stake in the company.

The overall policy of D.C.P.M. including the matters relating to investments, borrowings, loans etc., was controlled and directed by R. Dalmia (W. 7/p. 14, 15 43, 47) even though he was never a director or office-bearer of D.C.P.M.

Directors

The following were the directors of D.C.P.M. from time to time :— (Ex. 537).

1. V. D. Agarwal	19-10-40 to 7-7-52
2. Shanti Prasad Jain	20-12-41 to 1-11-47
3. Smt. Rama Jain	20-12-41 to 10-7-47
4. J. Dalmia	26-8-44 to 3-11-47
5. V. H. Dalmia	15-5-43 to 21-10-47
6. M. K. Roy	15-5-43 to 12-2-53
7. H. D. Bishnoi	17-9-44 to 12-12-49
8. Shyamlal Agarwal	2-2-48 to 2-5-48
9. M. P. Modi	2-5-48 to 11-8-48
10. S. R. Srivastava	15-1-49 to 15-3-52
11. Raizada Jagmohanlal	15-1-49 to 24-5-50
12. P. S. Patke	20-5-50 onwards
13. P. K. Roy	19-2-52 to 12-2-53
14. M. P. Sharma	13-12-52 onwards

That the directors appointed were mostly relations or employees of the D. J. Group will be seen from the following :—

1. V. D. Agarwal	Close relation of R. Dalmia.
2. H. D. Bishnoi	Employee of Rohtas Industries Ltd., a D.J. Group concern.
3. S. L. Agarwal	Employee of Allenberry & Co. Ltd.
4. M. P. Modi	Employee as well as a close relative of R. Dalmia.
5. S. R. Srivastava	Household Secretary of R. Dalmia.
6. Jagmohanlal Raizada	Relation of R. Dalmia.
7. P. S. Patke	Secretary of R. Dalmia.
8. M. P. Sharma	Employee of the D. J. Group.

R. Dalmia was not a director or office-bearer of D.C.P.M. but he was in effective control of the company. He also had control over the shares of D.C.P.M. whether they were registered in his name or not (Ex. 592 and the evidence of P. S. Patke : W. 7).

Shanti Prasad Jain and J. Dalmia were also directors. The former was Managing Director from 20-12-41 to 1-11-47 and the later, Deputy Managing Director from 26-8-44 to 3-11-47. They thus shared the control with R. Dalmia during those periods.

Shareholdings

Control was also exercised through the shareholdings. In 1937 the shares of D.C.P.M. were allotted to 29 individuals and 2 companies. The 29 individuals were either members of the D. J. Group or their relatives and/or employees (Ex. 537). The two companies to whom the shares were allotted, namely, Dalmia Cement and Dalmia Investment Co. Ltd., were under the control of the D. J. Group.

In 1940 the shareholders were 31 persons as stated above plus one R. Sharma who held 100 deferred Shares. R. Sharma was an employee of the D. J. Group.

Between 1943 and 1950, the shares of D.C.P.M. were registered in the names of a large number of persons, varying from 428 to 728. But later in November 1951, the shares of D.C.P.M. were found to be registered in the names of only 23 persons including R. Dalmia in whose name 5,500 out of 25,000 Preference Shares, 74,300 out of 2,00,000 Ordinary and 3,59,000 out of 5,00,000 Deferred Shares were held. (Ex. 494/2). Govan Bros. Ltd. held 5,282 Preference Shares of D.C.P.M. (Ex. 339/133) and R. Dalmia at that time (November 1951) was the sole beneficiary of the shares of Govan Bros Ltd. (Ex. 494).

In February 1952, the shares of D.C.P.M. were held by only 20 persons (Ex. 200/2). At that time R. Dalmia held 5,500 Preference Shares, 1,70,300 Ordinary and 359,000 Deferred Shares of D.C.P.M. Govan Bros. Ltd., held 5,000 Preference Shares and Dalmia Jain (Jind State) Ltd. held 830 Preference Shares.

On 10th April 1952, D.C.P.M. was converted into a private limited company. (Ex. 220/1 & w/7/p. 26). And on 14th April 1953, all the shares of D.C.P.M. were held by only 6 persons (Ex. 201) among whom were :—

R. Dalmia	{ 19,082 Pref. Shares 1,97,200 Ordy. Shares 359,000 Defd. Shares
Govan Bros. Ltd.	5,000 Pref. Shares

R. Dalmia was the sole beneficiary of Govan Bros. Ltd., and was also the beneficiary of the following shares of D.C.P.M. recorded in the following names on 14th April 1953 (Ex. 201/1 & Ex. 592).

830 Pref. Shares	}	R. P. Gurha
1,100 Ordy. Shares		
140,000 Defd. Shares		
88 Pref. Shares	}	P. S. Patke
300 Ordy. Shares		
1,100 Ordy. Shares	}	S. N. Dudani
1,100 Defd. Shares		
300 Ordy. Shares		Ragunath Rai

S. N. Dudani, Secretary of D.C.P.M., said in his affidavit dated 30th September, 1952 filed in the Punjab High Court, that all the shares of D.C.P.M. were owned by R. Dalmia and that none of them were owned by outsiders (Ex. 199/3). Also in his statement dated 10th October, 1952 before the District Judge, Delhi R. Dalmia declared on oath that D.C.P.M. nearly all belonged to him (Ex. 845).

To sum up, R. Dalmia held the following shares registered in his name during the years 1951-53.

	<i>Pref.</i>	<i>Ord.</i>	<i>Defd.</i>	
20-11-1951	5,500	74,300	3,59,000	(Ex. 494/2)
28-2-1952	5,500	1,70,300	3,59,000	(Ex. 200/2)
14-4-1953	19,082	1,97,200	3,59,000	(Ex. 201)
Total number of shares	25,000	2,00,000	5,00,000	

It will be seen from the above that R. Dalmia was in effective control of D.C.P.M. from the beginning till it went into liquidation in 1953 even though he was not a director (Ex. 225/1 and 537/26).



CHAPTER III

BORROWINGS, LOANS AND ADVANCES

Introductory

As we have seen, D.C.P.M. acted as a 'Financial Agency' for the D. J. Group and later for R. Dalmia. It borrowed large sums of money, mostly from the companies in which the investing public were interested and from Banks and Insurance Companies under the control of the D. J. Group and R. Dalmia, and thereafter the funds so borrowed were diverted for the use of sister companies and for the acquisition of new companies with sound financial position; also for retaining control over concerns under the control of the D. J. Group and of R. Dalmia.

Borrowings

The total of such borrowings as at the balance sheet dates of D.C.P.M. were :—

	Rs.	
28-2-1947	3,58,92,289	(Ex. 460)
28-2-1948	5,09,05,289	(Ex. 461)
28-2-1949	6,75,57,073	(Ex. 497)
28-2-1950	6,67,96,357	(Ex. 237)
28-2-1951	7,53,25,790	(Ex. 238)

These borrowings were mostly from Bharat Bank Ltd., Punjab National Bank Ltd., LESCO, D. J. Airways Ltd., S.S.B. Mills Ltd., M.D.M. Co. Ltd., and Bharat Insurance Co. Ltd. We have set out the details in Annexure I. The manner in which the above loans were eventually shown as repaid was fraudulent in that the amounts were either not repaid fully or they were shown as repaid (a) by transferring assets of sister companies of doubtful value or (b) by making adjustments towards selling and managing agency compensation received either by D.C.P.M. itself or for and on behalf of sister companies.

This is another instance of the practice of the D. J. Group and later R. Dalmia to use the funds of companies under their control in which the investing public were interested for their own benefit and for the benefit of concerns in which they were mainly interested. This was possible because of the inter-locking of control or common control over the companies concerned.

Loans and Advances

During the years 1947 to 1951 D.C.P.M. granted loans to R. Dalmia, J. Dalmia, Rashtriya Financial Corporation Ltd., Bennett Coleman & Co., Ltd., Ashoka Marketing Co. Ltd., Ashoka Agencies Ltd., Vyapari Ltd., Dalmia Investment Co. Ltd., Allenberry and Co. Ltd., and Rashtriya Investors Ltd. for details see Annexure II). The total of the book debts,

loans and advances as shown in the balance sheet of D.C.P.M. were as under :

	Rs.	
29-2-1948	2,65,59,383	(Ex. 461).
28-2-1949	6,34,52,603	(Ex. 497)
28-2-1950	4,19,52,821	(Ex. 237)
28-2-1951	7,35,49,077	(Ex. 238)

D.C.P.M. had no surplus funds to grant the loans to the above parties and as such, it was made to borrow large sums of money from Banks, Insurance Companies and other companies in which the investing public were interested. Most of the loans given by D.C.P.M. were unsecured.

This was also facilitated by appointing employees of D.C.P.M. as directors in some of the companies from whom large amounts were borrowed by D.C.P.M. or to whom large advances were made by D.C.P.M. To give a few names, the following employees of D.C.P.M. were appointed as directors in one or more of such companies.

1. Shriyans Prasad Jain
2. Shital Prasad Jain
3. G. L. Chokhani
4. P. N. Mehta
5. S. N. Dudani
6. R. P. Gurha
7. M. P. Dalmia
8. P. S. Patke
9. G. Ramachandran.

This is another instance of the pattern followed by R. Dalmia and the D. J. Group, namely, to manage the affairs of various companies by appointing their relations and or employees of their companies as directors. All these persons being subservient to R. Dalmia and the D. J. Group were not in a position to act independently. The effective control of all such companies therefore remained with D. J. Group and later R. Dalmia.

Shanti Prasad Jain and J. Dalmia in their replies in respect of Inter-company Transfer stated that they had no interest in or concern with D.C.P.M. from and after 31st May, 1948 and therefore they were not concerned with the said facts, statements, inferences and allegations mentioned in the Statement of Matters. They further stated that D.C.P.M. had dealings with several companies in the normal course of its business and there was nothing wrong, illegal or undesirable thereabout. It was further submitted that the overdraft account with the Bharat Bank Ltd., had nothing to do with the D. J. Group. Bharat Bank Ltd. was a large lender of funds particularly during the later years of the war period and immediately subsequent thereto. It was in the normal course of its business that D.C.P.M. had obtained cash credit accommodation with Bharat Bank Ltd. and the Bharat Bank Ltd. granted the same to D.C.P.M. in the normal course of the business in mutual interest on usual terms and securities, as required by the bank from time to time. D.C.P.M. made borrowings in the interest of its business which accordingly benefited its members including the D. J. Group to the extent of their holdings in the share capital of D.C.P.M.

Counsel for Shanti Prasad Jain in course of his arguments further contended that the banks which advanced loans to D.C.P.M. must have been satisfied about the soundness of D.C.P.M. and its ability to repay the loans, and that there has not been any loss to any of the banks which had advanced moneys to D.C.P.M. He further pointed out that by 28-2-1948 Shanti Prasad Jain had himself advanced sums totalling Rs. 32 lakhs to D.C.P.M. According to both Shanti Prasad Jain and J. Dalmia, there was nothing wrong or illegal in group financing.

As regard the loans granted by D.C.P.M., Shanti Prasad Jain stated that he was neither responsible for nor had any concern with D.C.P.M. from and after 31st May, 1948. According to Shanti Prasad Jain, all loans granted by D.C.P.M. prior to 31st May, 1948 were sound and recoverable and were repaid to D.C.P.M. by the persons or companies to whom they were granted without resulting in any loss to D.C.P.M. According to Shanti Prasad Jain, he was not concerned with the loans given to R. Dalmia, Rashtriya Financial Corporation Ltd., Bennett Coleman & Co. Ltd., Vyapari Ltd., Dalmia Investment Co. Ltd., Allenberry & Co. Ltd., and Rashtriya Investors Ltd.

J. Dalmia's reply was more or less on the same lines.

Shanti Prasad Jain stated that loans due by Ashoka Marketing Ltd., and Ashoka Agencies were duly repaid with interest to D.C.P.M. and that there was no loss incurred by D.C.P.M. in respect of any loans advanced up to 31st May, 1948 for which he could be held responsible.

J. Dalmia has also stated that the loans due by him and Vyapari Ltd. were duly repaid with interest to D.C.P.M. and that there was no loss to D.C.P.M.

Both Shanti Prasad Jain and J. Dalmia have, further, stated that the companies, Punjab National Bank Ltd., D. J. Aviation Ltd., Jaipur Traders Ltd., Ashoka Marketing Ltd., Ashoka Agencies Ltd., Vyapari Ltd., Rashtriya Financial Corporation Ltd., Delhi Glass Works Ltd., Rashtriya Investors Ltd., C. Lazaras & Co. Ltd., and Edward Keventer(s) Ltd., were never under the control of the D. J. Group, as, according to them, there was no D. J. Group after 31st May, 1948.

As regards the Punjab National Bank Ltd., we have dealt with the question whether it was under the control of the D. J. Group or not, when dealing with borrowings from the Punjab National Bank and it has been shown therein that the Punjab National Bank was under the control of the D. J. Group during the relevant period.

It is important to note that most of the advances made by D.C.P.M. were only for the benefit of the D.J. Group and/or companies which were under their control; and at a later stage for the benefit of R. Dalmia, J. Dalmia and Shanti Prasad Jain and/or companies under their individual control. Whether there was any loss or not, the propriety of the transaction has to be considered from the fact that D.C.P.M. was borrowing moneys on the one hand from banks, insurance companies and other public limited companies, with or without adequate security, and, advancing the same to companies under the control of the D. J. Group or of R. Dalmia and that too without security.

The following table will show the borrowings and lendings of D.C.P.M. as at the close of its financial years :

Year ended								Borrowings	Lendings
								Rs.	Rs.
28-2-1947	..	..	..	..	..	..	..	3,58,92,289	—
28-2-1948	..	..	..	..	..	..	..	5,09,05,289	2,65,59,383
28-2-1949	..	..	..	..	..	..	..	6,75,57,073	6,34,52,603
28-2-1950	..	..	..	..	..	..	..	6,67,96,357	4,19,52,831
28-2-1951	..	..	..	..	..	..	..	7,53,25,790	7,35,49,077

In many cases, it has not been possible to find out how the accounts were finally squared up as the books of account of D.C.P.M. were not available. At any rate, we do not know if and how R. Dalmia paid back the large amount that had been advanced to him by D.C.P.M. Summons were issued to R. Dalmia to furnish information as to how he repaid the sum of Rs. 1,52,13,695 due by him to D.C.P.M. Instead of furnishing the information required, he claimed protection under Article 20(3) of the Constitution.

Shanti Prasad Jain and J. Dalmia said that there was nothing wrong or illegal in group financing and that the initial industrial development of India and several other countries has been brought about by such perfectly legitimate and valid methods of inter-corporate investments and financing. All that we need say is that in the present cases we are concerned with the merits of the individual transactions. As far as it has been possible to find out, none of the loans advanced by D.C.P.M. were utilised for the economic growth of the country or for the expansion of any industry.

Besides, from the particulars indicated above, it is clear that large sums of money were borrowed by D.C.P.M. not for its own business but for the benefit of the members of the Group or companies under their control.

As to the repayment of these loans, as already stated, in most of the cases, it has not been possible to arrive at a definite conclusion whether as a matter of fact the loans were repaid. As has been pointed out earlier, as on 28-2-1949, the total amount borrowed by D.C.P.M. from the Bharat Bank Ltd., and Punjab National Bank Ltd. came to Rs. 1,50,87,663 whereas the value of equities and stock-in-trade was only Rs. 1,23,48,297-4-11 as set out below :

	Rs.	
Stock-in-trade	30,98,492 7 9	(Ex. 496/8)
Investments	92,49,804 13 2	(Ex. 497/9)
	<u>1,23,48,297 4 11</u>	

Also as already mentioned while discussing the borrowings from Bharat Bank Ltd., in or about January 1947, it was found by the Head Office Manager that the shares held as security were mostly unapproved and insufficient and that the bank had asked D.C.P.M. to furnish approved shares of sufficient value. But this was overruled by the Managing Director presumably because during the period R. Dalmia was the Chairman of the Bank and Shanti Prasad Jain, V. H. Dalmia and Shriyans

Prasad Jain were directors. Further, a large value of the hypothecated stock included the value of the unexcavated pipes.

All these matters are within the special knowledge of R. Dalmia and the companies concerned. None of them has given any explanation, and in many cases the books were deliberately destroyed. Not a single director or employee has come forward to explain how the repayments were made. In view of the frauds and other irregularities we have found to exist it is not possible to rely on the books, therefore, in the absence of explanation and assistance it is legitimate to draw unfavourable inferences against R. Dalmia and the companies and persons concerned, whenever there is *prima facie* evidence coupled with substantial ground for suspicion against them.

From what has been stated above, it will be seen that all this was possible because of the common control exercised by the Gorup and later by individual members themselves over the Banks, Insurance companies and other public companies from whom borrowings were obtained and the companies to which loans were given.

It may also be pointed out in this connection that shortly thereafter D.C.P.M. was converted from a public limited company to a private limited company, taken into voluntary liquidation, its assets and liabilities were transferred to another sister company, Delhi Glass Works Ltd., and later its books of account and records were destroyed. And in the absence of the books of account and other papers and also the refusal of R. Dalmia to furnish any information on the plea of protection under Article 20(3) of the Constitution, it has not been possible to find out if and how the several accounts were squared up.

In view of the facts and circumstances set out in this chapter, the D. J. Group and later R. Dalmia must be held responsible for D.C.P.M. borrowing funds from Banks, Insurance Companies and other public limited companies with or without adequate security and diverting the same as loans without security, for the benefit of the members of the group and/or companies under their control; and later for the benefit of R. Dalmia, J. Dalmia and/or Shanti Prasad Jain and/or the companies under their individual control.

ANNEXURE 'I'
DALMIA CEMENT AND PAPER MARKETING CO. LTD.

Details of Borrowings

From whom borrowed	Amount due as on 28-2-47	Amount due as on 28-2-48	Amount due on 28-2-49	Amount due on 28-2-50	Amount due on 28-2-51
1. Bharat Bank Ltd.	Not available	1,06,73,663	1,01,24,025	93,67,077	70,79,307
2. Punjab National Bank Ltd.	Do.	34,39,646	49,83,689	48,56,820	—
3. LESCO ..	1,61,01,198	1,08,78,952	1,10,86,727	35,64,391	45,03,463
4. D. J. Airways Ltd.	4,471 (On 30-6-47)	Nil (Dr. Bal. on 30-6-48)	60,21,452	69,56,825	68,60,063
5. D. J. Aviation Incorp.	—	—	24,75,000* (*increased to 99,93,364 as on 31-7-49)	30,39,752	56,29,668
6. S.S.B. Mills Ltd.	Not available	91,00,869	1,76,53,609	1,40,81,591	2,11,58,495
7. M.D.M. Co. Ltd.	Not available	52,02,148	74,61,053	63,21,059	1,13,55,937
8. Bharat Insurance Co. Ltd.	Not available	17,13,933	33,33,107	80,50,197	1,21,969
9. Jaipur Traders Ltd.	—	—	Nil	69,62,716	86,21,674
10. Ashoka Marketing Ltd.	—	—	(Dr. Balance)	787	44,88,417
11. Dadri Marketing Ltd.	Not known	—	—	6,74,937	12,42,672
12. Others ..	Not known	98,96,078	44,18,411	20,20,206	42,64,106
TOTAL bor- rowings as per balance sheets.	3,58,92,289	5,09,05,289	6,75,57,073	6,67,96,358	7,53,25,791

ANNEXURE 'II'
DALMIA CEMENT AND PAPER MARKETING CO LTD.

Details of Book-debts

To whom advanced	Amounts due on 29-2-48	Amounts due on 28-2-49	Amounts due on 28-2-50	Amounts due on 28-2-51	
	Rs.	Rs.	Rs.	Rs.	
1. R. K. Dalmia	17,29,681	62,75,354	78,11,973	1,52,13,695	
2. J. Dalmia ..	30,94,038	—	—	—	
3. Rashtriya Financial Corporation Ltd.	—	1,31,95,595	—	2,88,33,039	
4. Bennett Coleman & Co. Ltd.	(Cr. 20,00,000)	41,34,226	71,57,462	69,75,868	(increased to Rs.94,41,792 as on 31-10-51)
5. Ashoka Marketing Ltd.	—	34,33,134	87,70,373	—	(Cr. Bal. of Rs. 44,88,417)
6. Ashoka Agencies Ltd.	—	—	—	2,00,00,000	
7. Vyapari Ltd.	—	23,88,527	1,03,32,791	—	
8. Dalmia Investment Co. Ltd.	86,69,492	55,57,849	74,250	74,250	
9. Allenberry and Co. Ltd.	Not ascertainable	1,08,34,817	53,98,713	7,31,050	
10. Rashtriya Investors Ltd.	—	56,95,398	—	—	
11. Indian National Airways	—	21,69,244	15,32,542	—	
12. Others ..	—	87,68,459	8,74,707	17,21,175	
TOTAL ..	2,65,59,383	6,34,52,603	4,19,52,831	7,35,49,077	



CHAPTER IV

BORROWINGS FROM BANKS

A. Bharat Bank

D.C.P.M. borrowed heavily from the Bharat Bank Ltd. The outstandings as at the close of the financial years were as under :

									Rs.	
28-2-1948	..	..	..	..	..	..	..	..	1,06,73,663	Ex. 496
28-2-1949	..	..	..	..	..	..	..	..	1,01,24,025	Ex. 496
28-2-1950	..	..	..	..	..	..	..	..	93,67,077	Ex. 593
28-2-1951	..	..	..	..	..	..	..	..	70,79,307	Ex. 577

The Bharat Bank was under the effective control of the D. J. Group.

In or about February 1946, Shanti Prasad Jain was the Deputy Managing Director of D.C.P.M. During that period J. Dalmia was the Managing Director of D.C.P.M. and a former Director of the Bank.

R. Dalmia was the Chairman of the Bank at that time.

In April 1943, D.C.P.M. was granted an overdraft limit of Rs. 5 lacs against shares. The overdraft was adjusted in September 1943.

In October 1943 two cash credit limits of Rs. 8 lacs and Rs. 7 lacs were allowed to the company against fixed deposits for like amounts favouring Mrs. Durga Devi, wife of R. Dalmia, the then Chairman of the Bank.

In February 1944 the limit was raised to Rs. 40 lacs under the direct instructions of the Managing Director, against the security of shares of various companies of the D. J. Group. This was raised to Rs. 50 lacs in or about November 1946. This allocation was allotted to several branches of the Bank, viz., Daryaganj (Delhi), Lyons Range (Calcutta), Sham Bazar (Calcutta), Gaya, Patna, New Delhi and Fort (Bombay).

In or about January 1947 it was found by the Head Office Manager that the shares held as security were mostly unapproved and unsufficient and that the bank had asked D.C.P.M. to furnish approved shares of sufficient, value, but this was overruled by the Managing Director, J. Dalmia.

In or about August 1948, facilities allowed at the above branches of the Bank were withdrawn by the Bank except at the branches of New Delhi and Fort, Bombay. The limit, however, remained unchanged at Rs. 50 lacs. out of which Rs. 15 lacs was allocated to the Fort, Bombay, and the balance of Rs. 35 lacs to the New Delhi Branch.

In or about February, 1950, the following amounts, including some charges of interest thereon, were outstanding in the D.C.P.M. account from the two branches of the Bharat Bank Ltd. against the said limit of Rs. 50 lakhs.

									Rs.
(a) Cash Credit account, New, Delhi Branch	..	..	..	..	..	..	..	..	35,76,536
(b) Cash Credit account Fort, Branch. Bombay	..	..	..	..	..	..	..	..	14,74,107
									50,50,643

The security for the above advances consisted of large blocks of shares of the companies then under the effective control of R. Dalmia, among them,

8,500 shares of M.D.M. Co. Ltd. and

24,600 shares of S.S.B. Mills Ltd.

The market value of the above shares at the time was Rs. 74.70 lakhs while that of all the shares pledged was Rs. 82.69 lakhs.

The date when the shares of S.S.B. Mills and M.D.M. Co. were pledged is not known.

In or about October, 1946, an additional cash credit limit of Rs. 51 lakhs was sanctioned to D.C.P.M. at the Darya Ganj, Delhi Branch by the Managing Director, direct, at the instance of the Branch Manager. Thus the aggregate limit of cash credit increased to Rs. 101 lakhs.

In the first instances the advance was granted against the hypothecation of goods but the Hypothecation Agreement did not contain the particulars of the goods hypothecated.

On or about 27th October, 1949 another Hypothecation Agreement was executed pledging *iron sheets, pipelines* (both excavated and unexcavated), *tank plates* etc., lying at Calcutta and its suburbs and some places in Assam and also at some places in Pakistan.

In or about February 1950 the amount borrowed by D.C.P.M. against the additional cash credit limit of Rs. 51 lakhs was Rs. 43,10,092.

Thus the total amount outstanding from D.C.P.M. on the three cash/credit accounts at New Delhi, Delhi and Bombay was Rs. 93,31,009 in or about February, 1950.

The 'Charge' in respect of the assets pledged by D.C.P.M. as securities against its advance was registered with the Registrar of Joint Stock Companies, in December, 1949, that is, more than three years after the date of advance.

A large value of the hypothecated stock included the value of the unexcavated pipes.

All this was possible because both D.C.P.M. and Bharat Bank Limited were under the effective control of the D. J. Group.

B. Punjab National Bank

D.C.P.M. borrowed large amounts from the Punjab National Bank. The amounts outstanding as at the close of the financial years of D.C.P.M. are as follows:

								Rs.	
28-2-1948	..	..	..	..	..	..	..	34,39,646	Ex. 496/20-21
28-2-1949	..	..	..	..	..	..	..	49,83,639	Ex. 496/1-19
28-2-1950	..	..	..	..	..	..	..	48,56,820	Ex. 495/2 and Ex. 593/1-8

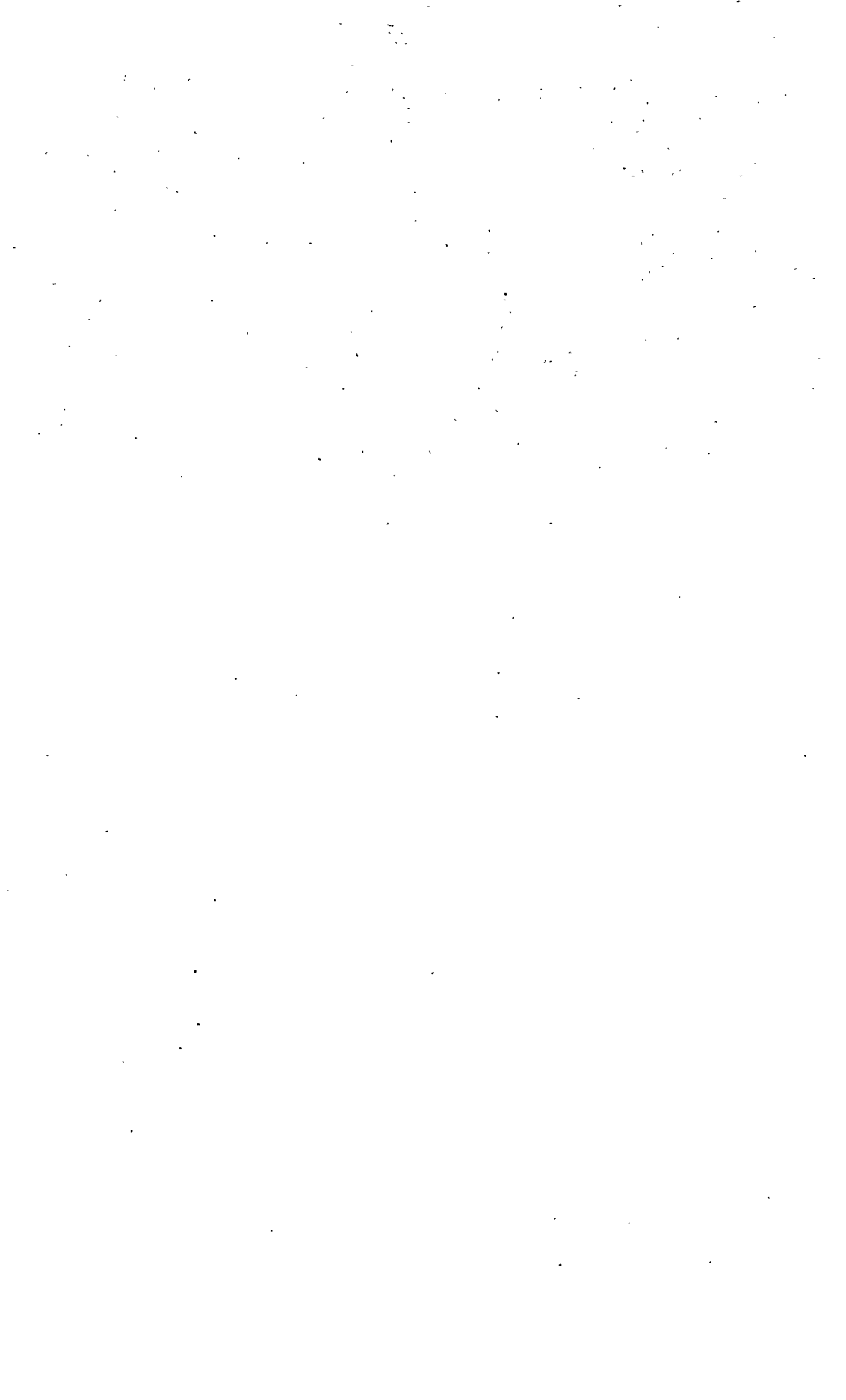
The Punjab National Bank Ltd. was under the effective control of the D. J. Group. The Group exercised such control in view of the fact that out of the share capital of 87,500 undivided ordinary shares of Rs. 100

each of the Bank in 1948, the Group owned a big block of 13,743 shares since before May 1948 (Ex. J. 24/945). Moreover, they controlled at that time a company called the National Investment Trust Ltd., which held another substantial block of shares. This company held a block of 31,925 undivided shares of Rs. 100 each as on 7-8-1948 (Ex. 887).

It will be seen from Ex. J. 24 that R. Dalmia and J. Dalmia between themselves continued to hold the aforesaid block of 13,743 shares till at least 31-1-1952.

Also, a big block of 116,214 subdivided shares of Rs. 25 each were purchased from the National Investment Trust Ltd., on 19-1-1951, by Express Newspapers Ltd., (Ex. 895) which in its turn sold these shares to Ashoka Marketing Ltd., on 31-8-1951 (Ex. 1067).

As on 28-2-1949 the total amounts borrowed by D.C.P.M. from these two banks was Rs. 1,50,87,663 whereas the value of equity and stock-in-trade was only Rs. 1,23,48,297-4-11, in the form of stock-in-trade, of Rs. 30,98,492-7-9 (Ex. 496/8) and investments, Rs. 92,49,804-13-2 (Ex. 497/9).



CHAPTER V

BORROWINGS FROM COMPANIES

D.C.P.M. also borrowed money from the following companies which were under the control of the D. J. Group :—

1. L.E.S. Co.
2. Dalmia Jain Airways Ltd.
3. Dalmia Jain Aviation Ltd.
4. Sir Shapurji Broacha Mills Ltd.
5. Madhowji Dharamsi Mfg. Co. Ltd.
6. Bharat Insurance Co. Ltd.
7. Jaipur Traders Ltd.
8. Dadri Marketing Co. Ltd.

A. L. E. S. Co.

This company was a D. J. Group concern and it held Government Securities of about Rs. 66 lakhs as on 31-3-1946 (Ex. 523). These Securities were gradually sold and the sale proceeds were used by the D. J. Group and later R. Dalmia through D.C.P.M.

The following table will show the amounts due by D.C.P.M. to L.E.S. Co. as on the close of the financial year of L.E.S. Co. :—

							Rs.		
31-3-1947	..	..	..	..	..	..	1,00,27,649-10-1	Ex. 524	
31-3-1948	..	..	..	..	..	..	1,09,11,290-11-7	Ex. 525	
31-3-1949	..	..	..	..	..	..	1,13,53,056-2-1	Ex. 526	
31-3-1950	..	..	..	..	..	..	37,96,792-11-10	Ex. 527	
31-3-1951	..	..	..	..	..	..	44,10,269-10-11	Ex. 528	
31-3-1952	..	..	..	..	..	..	74,09,166-5-5	Ex. 529	
31-3-1953	..	..	..	..	..	..	Nil	Ex. 727	

During the financial year 1949-50 of L.E.S. Co., D.C.P.M. transferred a large number of shares of sister companies of the value of Rs. 77,45,112-8-0 to reduce its indebtedness to L.E.S. Co. and to bring down the balance as on 31-3-1950 to Rs. 37,96,793 (Ex. 726). By December 1952 D.C.P.M.'s indebtedness to L.E.S. Co. was increased to Rs. 1,15,85,416 which was mainly set off by the transfer of shares (Ex. 727) :—

B. D. J. Airways

D.C.P.M. borrowed moneys from D. J. Airways Ltd. The amounts due by D.C.P.M. to D. J. Airways as at the close of the financial years of D. J. A. were:

	Rs.	
As on 30-6-1949	15,44,214]	Ex. 26 & Ex. 34
As on 30-6-1950	Nil	
As on 30-6-1951	90,35,368	Ex. 26/17/2
As on 13-6-1952	3,43,78,924	Ex. 6

D. J. Airways Ltd., was taken into liquidation on 13th June, 1952 and D.C.P.M. paid a sum of Rs. 25,00,000 to the Liquidator of the D. J. Airways Ltd., in or about October 1952 (Exs. 881 & 881-A).

In respect of the balance of Rs. 3,18,78,924 payable by D.C.P.M. to D. J. Aviation (as successor of D. J. Airways) the following Assets were transferred by D.C.P.M. on or about 13-2-1953:

	Rs.	
Amount due from Allenberry	99,16,371-	2-7
Investments	77,53,964-	4-0
G.M.C. Gazette & Khwaja Nazir Ahmed	13,00,000-	0-7
General Advances & Loans	93,732-	0-0
Furniture & Motor Car	40,000-	0-0
Value of 4,29,935 shares of DJA in liq., @ Rs. 5/4 per share ..	22,57,158-	12-0
(Ex. 33)	2,13,67,226-	2-7

This resulted in reducing the indebtedness of D.C.P.M. to D. J. Aviation to Rs. 1,05,11,697-7-0.

Between 13th & 17th February, 1953 D. J. Aviation allowed a discount of Rs. 98,77,577-6-10 to D.C.P.M. in respect of the amount of Rs. 3,18,78,924 due by D.C.P.M. to D. J. Airways. Of this amount Rs. 2,44,25,417 was repayable in instalments spread over 19 years without interest (Ex. 5).

After adjusting Rs. 98,11,577-6-10 as "loss on settlement of claim" against the amount of Rs. 1,05,11,697-7-0 due by D.C.P.M. the balance of Rs. 6,34,120 due from D.C.P.M. was transferred to the B.U.A. A/c. Thus D.C.P.M. settled its liability of Rs. 3,43,78,924 to D. J. Airways.

C. D. J. Aviation

D.C.P.M. owned D. J. Aviation the following amounts on the dates mentioned against each:

	Rs.
31-7-1949	99,93,963
31-7-1950	16,05,310
31-7-1951	44,51,661

The indebtedness of Rs. 99,93,963 as on 31-7-1949 was brought down by D.C.P.M. by transferring to D. J. Aviation shares of sister companies. The amounts due by D.C.P.M. to D. J. Aviation was *unsecured and carried interest at 3% only*. (Ex. 492).

D. S.S.B. & M.D.M.

Similarly D.C.P.M. borrowed from S.S.B. and M.D.M. amounts ranging from Rs. 91 lakhs to Rs. 2,41,27,216 and Rs. 52 lakhs to

Rs. 1,25,48,074 respectively. These loans were also *unsecured* and carried interest at $4\frac{1}{2}\%$ (Ex. 492/363).

E. Bharat Insurance Co.

The following amounts were due by D.C.P.M. to Bharat Insurance Co. as on the close of the financial years of D.C.P.M.

								Rs.		
28-2-48	..	..	..	..	..	..	..	17,13,983	Ex.	496
28-2-49	..	..	..	..	..	..	..	33,33,107	Ex.	575
28-2-50	..	..	..	..	..	..	..	80,50,197	Ex.	593
28-2-51	..	..	..	..	..	..	..	1,21,969	Ex.	577

All the above advances were *unsecured*. Shriyans Prasad Jain an employee of D.C.P.M. up to 30-11-49 was also a director and Vice-Chairman of the Bharat Insurance Co. Ltd. (Ex. 366); and during the relevant period Bharat Insurance Co. Ltd., was under the control, first of the D. J. Group and later of R. Dalmia. D.C.P.M. transferred from time to time the following shares to Bharat Insurance Co. Ltd., to adjust the account.

- (i) On 31-12-46 a sum of Rs. 43,87,604 was due by D.C.P.M. against which 5,000 shares of S.S.B. Mills Ltd. of the value of Rs. 15 lakhs and 4,600 shares of M.D.M. of the value of Rs. 23 lakhs aggregating Rs. 36 lakhs were transferred. Ex. 847 & Ex. 366
- (ii) On 31-5-49 a sum of Rs. 25,74,963-15-0 was due by D.C.P.M. (New Delhi Branch) to Bharat Insurance Co. Towards the repayment of this amount, Bharat Insurance Co., was made to subscribe for 24,750 Pref. Shares of Rs. 100 each of D. J. Aviation of the value of Rs. 24,75,000 which was adjusted against the amount due by D.C.P.M. in the books of Bharat Insurance Co. Ltd. Ex. 847 Exs. 366 and 847
- (iii) As on 30-12-50 a sum of Rs. 29 lakhs was due by D.C.P.M. to Bharat Insurance Co. Ltd., against which the Nahur land was transferred by D.C.P.M. to Bharat Insurance Co. Ltd. for Rs. 40,19,664. Ex. 847 (Ex. 366/51 & 64)

F. Jaipur Traders

D.C.P.M. borrowed large sums of money from Jaipur Traders Ltd., a company under the control of R. Dalmia (Ex. 598). As on the close of the financial years of D.C.P.M. the amounts due by D.C.P.M. to Jaipur Traders Ltd., were as follows:

								Rs.	
As on 28-2-50	..	..	..	..	..	..	..	67,62,716 (Ex. 495/2, 593/1-8)	
As on 28-2-51	..	..	..	..	..	..	..	86,21,674 (Ex. 577).	

As on 28-2-49 a sum of Rs. 19,000 was due to D.C.P.M. by Jaipur Traders Ltd. (Ex. 577). The above borrowings were *unsecured*.

Jaipur Traders Ltd., went into liquidation on 14-10-53 and it was finally dissolved on 10-5-54 (Ex. 598/9). Its books of accounts were also destroyed.

In response to the summons issued by the Commission, D. A. Patel, liquidator, replied that all the books, accounts and documents of Jaipur Traders, and of the liquidator, were duly destroyed after the dissolution of the said company, under the authority of the directors and the Extraordinary resolution passed by the members of the said company in the General meeting held on 3-5-54 (Ex. 598).

No information is available to show how D.C.P.M. settled this large liability of Jaipur Traders Ltd. (Ex. 599) except a certificate dated 20-4-53 signed by R. Sharma, Director of Jaipur Traders Ltd., to the effect that nothing was due to or due by the Jaipur Traders Ltd. (Ex. 227 B/42).

Since the paid-up capital of the company was only Rs. 25,000 it is not known what was the source of funds from which such large sums of money ranging up to 86,21,674 were advanced. The only inference that one can draw from all this is that the money advanced by Jaipur Traders Ltd. to D.C.P.M. was either the secret money of the D. J. Group or of R. Dalmia or that some investments were transferred by Jaipur Traders Ltd., without receiving cash payment from D.C.P.M.

G. Dadri Marketing Co. Ltd.

Dadri Marketing Co. Ltd., which was incorporated on 10-5-41 as a public limited company in the then State of Jind (Punjab) (Ex. 597) was under the effective control of the D. J. Group and later of R. Dalmia. Its paid-up capital was Rs. 1,01,000 (Ex. 597/2). On 24-4-52 it was converted into a private limited company (Ex. 597/7-8). The following were the directors at the time of the winding up (Ex. 597/1):

1. Vishnu Kumar.
2. G. Ramchandran.
3. Jagdish Chander.

Of these, G. Ramchandran was an employee of D.C.P.M. working as a Stenographer under Shital Prasad Jain. He also did part-time work for R. Dalmia. Vishnu Kumar was the Secretary of Dalmia Dadri Cement Ltd. Dadri Marketing Co. Ltd. acted as the selling agents of Dalmia Dadri Cement Ltd.

The company went into voluntary liquidation on 13-12-53. D. A. Patel was again appointed the Voluntary liquidator. The liquidator filed the final statement of account with the Registrar of Companies. The assets of the company on the date of commencement of the winding up were estimated at Rs. 11,72,378 (Ex. 597/2). All the assets and liabilities were transferred to Manav Sahyog Private Ltd., another concern of R. Dalmia in pursuance of the Scheme of Arrangement under section 208 C with effect from 9-1-57 under the agreement executed on 20-2-57. Manav Sahyog Private Ltd., was registered on 15-12-56. The following were the directors of Manav Sahyog Private Ltd :—

(Ex. 597/29).

1. O. P. Dhawan.
2. Vishnu Kumar.
3. I. N. Patel.

The following were the shareholders of Manav Sahyog Private Ltd., as on 28-2-57 (Ex. 597/29).

1. S. N. Dudani	..	..	..	..	..	38.5	Equity Shares
2. Asia Udyog Pvt. Ltd.	..	..	..	..	..	74	"
3. R. Dalmia	..	..	..	..	..	867	"
4. Vishnu Kumar	..	..	..	..	..	10.5	"
5. R. P. Gurha	..	..	..	..	..	20	"
						<hr/> 1010.0 <hr/>	

Dadri Marketing Ltd., advanced moneys from time to time to D.C.P.M. The amounts due by D.C.P.M. to Dadri Marketing Ltd., as on the close of the financial years of D.C.P.M. were :—

										Rs.
28-2-50	..	..	..	..	..	..	..	..	..	6,74,937 (Ex. 593)
28-2-51	..	..	..	..	..	..	..	..	..	12,42,672 (Ex. 577)

Dadri Marketing Ltd., being the selling agents of Dalmia Dadri Cement Ltd., used the funds of Dalmia Dadri Cement Ltd. The money advanced by Dadri Marketing Co. Ltd. to D.C.P.M. was in fact the money of Dalmia Dadri Cement Ltd. in which the investing public was interested at that time (Ex. 644—649).

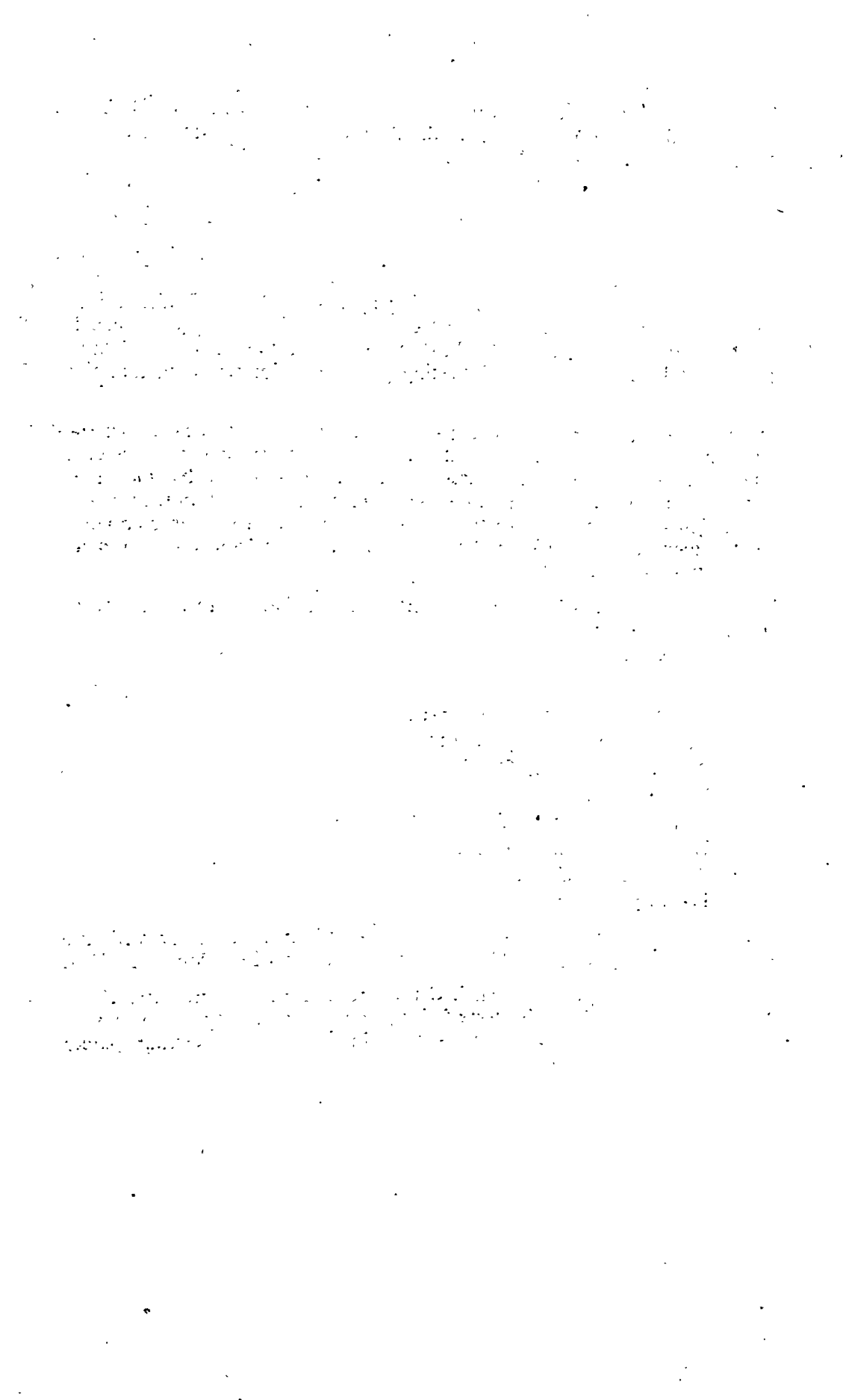
From the foregoing it will be apparent that D.C.P.M. has been borrowing large amounts at low interest without any security from sister concerns; and the repayment thereof appears to have been effected by means of transfer of shares and other adjustment entries. These borrowings in turn were utilised either in investments or in advances to other companies and/or the members of the D. J. Group as will be seen from our comments on Inter-company loans.

During the years 1947 to 1952 D.C.P.M. granted loans to the following persons and companies.

1. R. Dalmia.
2. J. Dalmia.
3. Rashtriya Financial Corporation Ltd.
4. Bennett Coleman & Co. Ltd.
5. Ashoka Marketing Co. Ltd.
6. Vyapari Ltd.
7. Ashoka Agencies Ltd.
8. Dalmia Investment Co. Ltd.
9. Allenberry & Co. Ltd.
10. Rashtriya Investors Ltd.

A consolidated statement showing the names of parties together with the amount of loans granted by D.C.P.M. is annexed herewith (Annexure III).

It will be noted that D.C.P.M. had no surplus funds to grant the above loans. In fact D.C.P.M. borrowed large sums of money from banks, insurance companies and other companies in which the investing public was interested (Ex. 644—649).



CHAPTER VI

LOANS AND ADVANCES

A. R. Dalmia

D.C.P.M. advanced large sums of money to R. Dalmia as under :

	Rs.	
As on 28-2-48	17,29,681	(Ex. 496)
As on 28-2-49	62,75,354	(Ex. 575)
As on 28-2-50	78,11,975	(Ex. 593)
As on 28-2-51	1,52,13,695	(Ex. 577)

These loans were unsecured, or partially secured, and interest was charged at or about 6 per cent. On 20-4-53 R. Dalmia gave a certificate that nothing was due to him or due by him to D.C.P.M. (Ex. 227-B/33). This would show that the amount of Rs. 1,52,13,695 due by R. Dalmia to D.C.P.M. was squared up. There is however no material to show that the amount of Rs. 1,52,13,695 was paid by R. Dalmia. The inference therefore is that the credit balance of the profit and loss account of D.C.P.M. as on 28-2-51 (Exs. 577 and 238) amounting to Rs. 57,51,824 and the discount of Rs. 98,77,577 received from D. J. Aviation on or about 13-2-53 (Exs. 230 & 231) was adjusted against the amount due from R. Dalmia as he was the sole beneficiary of D.C.P.M. at that time (Exs. 201 & 502).

Summonses were issued to R. Dalmia to furnish information as to how he cleared the sum of Rs. 1,52,13,695 due by him to D.C.P.M. The information called for was not furnished and protection under Article 20(3) of the Constitution was claimed.

B. J. Dalmia

D.C.P.M. also advanced large amounts to J. Dalmia, younger brother of R. Dalmia. The amount due to D.C.P.M. by J. Dalmia as on 29-2-48 was Rs. 30,94,038 (Ex. 496). The account of D.C.P.M. in the books of J. Dalmia was closed by transferring the amount from D.C.P.M.'s account to Vyapari Ltd. Vyapari Ltd. was incorporated in July 1948. It had a paid-up capital of Rs. 3,10,000. The following were the directors (Ex. 601/5):

1. J. M. Gupta
2. V. P. Gupta
3. M. S. Lamba
4. Raizada Manmohanlal
5. P. P. Gupta.

These loans to Vyapari Ltd., were unsecured and carried interest at 6 per cent. By 4-9-50 the account of Vyapari Ltd. was closed in the books of J. Dalmia by transferring a large number of investments and the amounts due by J. Dalmia to other companies. In the absence of the books of D.C.P.M. it is not known how the account of Vyapari Ltd. was settled.

Details of the advances by D.C.P.M. to Rashtriya Financial Corporation, Bennett Coleman & Co. Ltd., Ashoka Marketing Co. Ltd., Ashoka Agencies, Dalmia Investment Co. Ltd., Allenberry & Co. Ltd., and Rashtriya Investors Ltd., are as below :

C. Rashtriya Financial Corporation

Rashtriya Financial Corporation was incorporated as a Private Limited Company in September 1948 (Ex. 601/5). Its paid-up capital was Rs. 2,000 made up of 200 shares of Rs. 100 each; Rs. 10 per shares 'paid-up' (Ex. 601/5).

On 23rd February, 1949 the 200 shares were allotted to (Ex. 601/17)

(a) Rashtriya Investors Ltd.	..	..	..	..	100 shares (Ex. 601/95)
(b) Rashtriya Agencies Ltd.	..	..	..	..	100 shares (Ex. 601)
					<u>200</u>

Both Rashtriya Investors Ltd. and Rashtriya Agencies Ltd., were concerns of R. Dalmia.

On 31st January 1952, 100 shares held by Rashtriya Investors Ltd., were transferred to D.C.P.M. (Ex. 601/30). A further amount of Rs. 10 per share was called up which increased the paid-up capital from Rs. 2,000 to Rs. 4,000 (Ex. 601/30).

Manmohanlal Raizada was the first Director. He resigned on 21st February 1949 and in his place S. N. Dudani was appointed as Director on 21st February 1949 and continued to be the only director till Rashtriya Financial Corporation Ltd., was dissolved. S. N. Dudani was at that time the Secretary of D.C.P.M. at Delhi. (Exs. 601 & 537). On 28th February 1949 D.C.P.M. sold the following shares to Rashtriya Financial Corporation Ltd., for a sum of Rs. 1,31,95,595 (Ex. 501).

					Rs.
18,812	Conversion shares of S.S.B. at Rs. 275	..	..	..	51,78,300
8,128	Conversion shares of M.D.M. at Rs. 455	..	..	..	36,98,240
4,613	'A' Class shares of LESCO at Rs. 400	..	..	..	18,45,200
42,850	'B' Class shares of LESCO at Rs. 40	..	..	..	17,14,000
71,560	Deferred shares of S.S.B. at Rs. 7-4-0	..	..	..	5,18,810
10,915	Deferred shares of M.D.M. at Rs. 23	..	..	..	2,41,045
					<u>1,31,95,595</u>

In the Balance Sheet of D.C.P.M. as at 28-2-49 a sum of Rs. 1,31,95,595 was shown as due and outstanding from Rashtriya Financial Corporation Ltd., under the heading 'Book Debts' (Ex. 494 and Ex. 497). In or about March 1949, 20,000 shares of Govan Bros. Ltd., valued at Rs. 16 lakhs were transferred to Rashtriya Financial Corporation Ltd. (Exs. 501 & 590). This increased the indebtedness of Rashtriya Financial Corporation Ltd., to Rs. 1,47,95,605.

Within two months, *i.e.*, on 30th April 1949, Rashtriya Financial Corporation Ltd., transferred to D.C.P.M., LESCO and Ashoka Marketing Co. Ltd., the following investments towards its indebtedness and the entire amount of Rs. 1,47,95,605 was adjusted towards its indebtedness to D.C.P.M.

(a) Transferred to D.C.P.M. (Ex. 501)

	Rs.
32,812 Conv. shares of S.S.B. at Rs. 200	65,62,400
21,528 'A' Class shares of LESCO at Rs. 130	27,98,640
60,160 'B' Class shares of LESCO at Rs. 13	7,82,080
60,000 Ordy. shares of Rajputana Investment at Rs. 3	1,80,000
31,000 National Bank of Lahore Ltd. at Rs. 3	93,000
10,000 Sun Beam Corporation Ltd. at Rs. 8	80,000
10,000 Indian Traders Ltd. at Rs. 8	80,000
5,000 General Investment Ltd. at Rs. 9	45,000
1,440 Asiatic Stores Ltd. at Rs. 9	12,960

(b) Transferred to LESCO through D.C.P.M. (Ex. 722)

71,400 Defd. shares of M.D.M. at Rs. 5	3,57,000
100 Defd. shares of M.D.M. at Rs. 8	800
10,915 Defd. shares of S.S.B. at Rs. 15	1,63,725
60,000 Ordinary shares of Gwalior Bank Ltd. at Rs. 2	1,20,000
17,400 Pref. shares of D.C.P.M. at Rs. 50	8,70,000
11,250 Shares of Bennett Coleman & Co. at Rs. 200	22,50,000
	<hr/> 1,43,95,605

(c) Transferred to Ashoka Marketing Co. Ltd.
(Ex. 591)

D.C.P.M. had transferred 11,250 Preference shares of Bennett Coleman & Co. Ltd., for a total price of Rs. 63,02,812 as set out below (Ex. 501):

	Rs.
On 31-3-48 9,000 Pref. shares to Gwalior Bank Ltd. at Rs. 560/4	50,42,250
On 31-5-49 2,250 Pref. shares to Bharat Journals Ltd. at Rs. 560/4 per share	12,60,562
	<hr/> 63,02,812

On 31st May 1949, Rashtriya Financial Corporation Ltd., transferred to LESCO 11,250 Preference shares of Bennett Coleman & Co. Ltd., for only Rs. 22,50,000. LESCO in its turn transferred these shares to D.C.P.M. on 29-12-50 for the same price. (Exs. 722 and 731). Thus D.C.P.M. got back the 11,250 shares of Bennett Coleman & Co. Ltd., for Rs. 22,50,000 as against their previous price of Rs. 63,02,812.

As the paid-up capital of Rashtriya Financial Corporation Ltd., was only Rs. 4,000 it is not known from what source it met this huge loss (Ex. 501/5, 30). The paid-up capital of Gwalior Bank was Rs. 12,46,037. (Exs. 508 to 510). The inference is that this process was adopted to enable the D. J. Group and R. Dalmia to introduce their secret profits into one or other of their concerns.

In the absence of the books of D.C.P.M. and the other three companies it is not possible to probe further into this transaction and ascertain which of the three companies did in fact suffer the loss on the resale of Preference Shares of Bennett Coleman to D.C.P.M.

On 28th February 1951 D.C.P.M. transferred the following shares to Rashtriya Financial Corporation Ltd., which included 21,800 Conversion shares of S. S. B. Mills and 7,200 Conversion shares of M. D. M. Co. Ltd., transferred by D. J. Airways to D.C.P.M. (Exs. 501/2, 3 & 590):

	Rs.
32812 Conv. Shares of S.S.B. Mills Ltd. at Rs. 200 per share	65,62,400
39,656 'B' Class shares of LESCO at Rs. 13	5,15,528
7,400 'A' Class shares of LESCO at Rs. 130 per share	9,63,170
19,128 Shares of M.D.M. Co. Ltd. at Rs. 300	57,38,400
	<hr/> 1,37,79,498 <hr/>

A further sum of Rs. 1,50,63,541 was debited to the account of Rashtriya Financial Corporation Ltd. in the books of D.C.P.M. during the financial year 1950-51 of D.C.P.M. (Ex. 577). The details of this debit are not available.

The total amount due to Rashtriya Financial Corporation Ltd. to D.C.P.M. as on 28th February 1951 was Rs. 2,88,33,039 as per the balance sheet of D.C.P.M. as on that date (Ex. 677).

Rashtriya Financial Corporation Ltd., was taken into liquidation on 4th September 1952 and S. K. Sanghi was appointed Voluntary Liquidator. (Ex. 601). S. K. Sanghi at that time was an employee of Bennett Coleman & Co. Ltd. The Liquidator filed his final statement of account with the Registrar of Companies on 20-12-52 (Ex. 601/37, 38) under section 208E of the Indian Companies Act, 1913. According to the Liquidator's statement, the total amount realised, including the opening cash balance of Rs. 288-5-0 was Rs. 2,925-5-6. Of this Rs. 2,600 was utilised towards the Return of Capital to the following companies and the balance Rs. 325-5-6 represents the liquidation expenses :—
(Ex. 601/37, 38).

	Rs.
31-10-52 paid to D.C.M.P. on 100 shares at Rs. 13 per share	1,300
31-10-52 paid to Rashtriya Agencies Ltd. at Rs. 13 per share on 100 shares	1,300
	<hr/> 2,600 <hr/>

Rashtriya Financial Corporation Ltd. was finally dissolved in March 1953, i.e., a month after D.C.P.M. went into liquidation (Exs. 233 and 604/25). There is a certificate dated 20-4-53 signed by S. K. Sanghi, the liquidator of Rashtriya Financial Corporation Ltd., stating that the account of D.C.P.M. stood fully adjusted in its books (Ex. 227B).

It is not known how the debt of Rs. 2,88,33,039 due by Rashtriya Financial Corporation Ltd. to D.C.P.M. was paid as the books of account are not available.

D. Bennett Coleman & Co. Ltd.

In or about April 1946 the control of Bennett Coleman & Co. Ltd., a private limited company, was acquired by the D. J. Group and since then it has been under the effective control first, of the D. J. Group (Ex. 600) and later of R. Dalmia. Then, towards the latter part of 1955 it went under the control of Shanti Prasad Jain.

Large sums of money were advanced by D.C.P.M. to Bennett Coleman & Co. Ltd. The amounts due by Bennett Coleman & Co. Ltd., to D.C.P.M. are as set out below :

	Rs.	
As on 28-2-49	41,34,226	(Ex. 496)
As on 28-2-50	71,57,462	(Ex. 593/4)
As on 28-2-51	69,75,868	(Ex. 577)
As on 28-10-51	94,41,792	(Ex. 596)

The volume of dealings of Bennett Coleman & Co. Ltd., with D.C.P.M. are set out below : (Exs. 596 and 600).

	Rs.	
<i>Financial year 1948</i>		
Total amounts received from D.C.P.M., Bombay and interest charges.	59,88,798	11 9
Less : Amounts paid to D.C.P.M. and interest charges	24,85,573	13 9
	<u>15,03,224</u>	<u>14 0</u>

<i>Financial year 1949</i>		
Opening credit balance on 1-1-49	15,03,224	14 0
Add: Further credits during the year (Financed to Bennett Coleman & Co. Ltd.)	60,70,119	1 10
Add: Interest at 6% per annum	2,72,659	15 6
	<u>78,46,003</u>	<u>15 4</u>
Less: Adjustments during the year	5,98,995	5 0
	<u>72,47,008</u>	<u>10 4</u>

<i>Financial year 1950</i>		
Opening credit balance	72,47,008	10 4
Add: Further credits during the year	77,25,827	9 6
Add: Interest at 6% per annum	2,96,832	12 6
	<u>1,52,69,669</u>	<u>0 4</u>
Less: Adjustments during the year	81,73,105	9 0
Closing credit balance as on 31-12-1950	<u>70,96,563</u>	<u>7 4</u>

<i>Financial year 1951</i>		
Opening credit balance	70,96,563	7 4
Add: Further credits during the year	72,67,281	15 0
	<u>13,34,500</u>	<u>11 0</u>
Add: Interest at 6% per annum	3,74,406	9 0
	<u>1,60,76,792</u>	<u>10 4</u>
Less: Adjustments during the year	1,47,42,291	10 6
Closing credit balance as on 31-12-51	<u>13,34,500</u>	<u>11 4</u>

The amounts advanced to Bennett Coleman & Co. Ltd., were unsecured. Interest to Bennett Coleman & Co. Ltd., was charged as follows :—

- (a) To Bennett Coleman & Co. Ltd., Delhi account @ 4½% up to (Ex. 577A) June 1948.
- (b) Bennett Coleman & Co. Ltd., Bombay account @ 3½% up to (Ex. 576A) 31-12-1948.

The amount of Rs. 1,47,42,251-15-4 (Ex. 600) adjusted during the financial year 1951 of Bennett Coleman & Co. Ltd., included the sum of Rs. 1 crore adjusted on 31-12-51 (Ex. 596/26) in respect of the following shares by Bennett Coleman & Co. Ltd., to D.C.P.M. (Ex. 366/23).

	Rs.
21,000 Conversion shares of S.S.B. Mills Ltd., @ Rs. 295	61,93,400
4,000 Conversion shares of M.D.M. Co. Ltd., @ Rs. 500	20,00,000
18,066 Preference shares of D.J. Aviation at Rs. 100 per share ..	18,06,600
	<hr/> 1,00,00,000

A sum of Rs. 94,41,792 was due by Bennett Coleman & Co. Ltd., to D.C.P.M. as on 30th October 1951. This was cleared by making the above adjustments (Ex. 596/26). The rates at which the shares of S.S.B. Mills Ltd., and M.D.M. Co. Ltd., were transferred by Bennett Coleman & Co. Ltd., to D.C.P.M. were inflated having regard to the rates at which other transactions were made about the same time : (Exs. 501 & 590).

- (i) On 23-3-1950 D.C.P.M. transferred 21,800 Conversion shares of S.S.B. Mills Ltd., and 7,200 Conversion shares of M.D.M. Co. Ltd., to D.J.A. at Rs. 200 and Rs. 300 per share respectively.
- (ii) On 28-2-51 D.J.A. transferred 21,000 shares of S.S.B. Mills Ltd., and 7,200 Conversion shares of M.D.M. Co. Ltd., to Rashtriya Financial Corporation Ltd., through D.C.P.M. at the rates of Rs. 200 and Rs. 300 per share respectively. D.J.A. (Statement of matters).
- (iii) On 28-2-51 D.C.P.M. transferred 11,012 shares of S.S.B. to Rashtriya Financial Corporation Ltd., at Rs. 200 per share and 11,928 shares of M.D.M. Co. Ltd., to Rashtriya Investors Ltd., at Rs. 300 per share (Ex. 501/2, 3 and Ex. 590/1-19)..

From the above it is clear that the real value of the shares of S.S.B. Mills and M.D.M. Co. Ltd., transferred by Bennett Coleman & Co. Ltd., on 31-10-51 was only Rs. 54,00,000 as set out below :

21,000 Conversion shares of S.S.B. Mills at Rs. 200	42,00,000
4,000 Conversion shares of M.D.M. at Rs. 300	12,00,000
	<hr/> 54,00,000

As against the real value of Rs. 54 lacs, Bennett Coleman & Co. Ltd., transferred these shares to D.C.P.M. at an inflated value of Rs. 81,93,400. Bennett Coleman & Co. Ltd. thus benefited to the extent of Rs. 27,93,400 in liquidation of its debt to D.C.P.M.

E. Ashoka Marketing Co. Ltd.

Ashoka Marketing Co. Ltd. was incorporated on 14th July 1948 (Ex. 595/40-41). Its paid-up capital was originally Rs. 5,00,000. This was increased to Rs. 10,00,000 in 1952 and further increased to Rs. 15,00,000 in 1955 (Exs. 595/58, 25 and 45).

Among its directors were the following who were closely connected with D.C.P.M. :

1. Shital Pd. Jain—an employee of D.C.P.M.
2. H.D. Bishnoi—a Director of D.C.P.M.
3. M.K. Roy Do.

The following amounts were received by Ashoka Marketing Co. Ltd., from D.C.P.M. and *vice versa*.

(a) Advance by D.C.P.M. to Ashoka Marketing Co. Ltd.

							Rs.
As on 28-2-49	..	..	..	..	..	..	34,33,134 (Ex. 496/1 and 4)
As on 28-2-50	..	..	..	..	..	..	87,70,373 (Ex. 593/1 and 3)

(b) Advance by Ashoka Marketing Co. Ltd. to D.C.P.M.

As on 28-2-51 Rs. 44,88,417 (Ex. 577/1, 5 and 6).

The advances to and from Ashoka Marketing Co. Ltd. were unsecured. Interest was charged or paid @ 6% on the sums outstanding.

In its letter dated 2nd May 1953, Ashoka Marketing Co. Ltd., informed D.C.P.M. that there was no balance due by or due to D.C.P.M. as on the date of the letter (Ex. 227B). It appears that the amount of Rs. 44,88,417 due to Ashoka Marketing Co. Ltd., by D.C.P.M. on 28-2-51 was adjusted against an amount of Rs. 2,00,00,000 due by Ashoka Agencies Ltd. to D.C.P.M. (Ex. 595).

F. Ashoka Agencies Ltd.

Ashoka Agencies Ltd., was incorporated on 14th June, 1949 as a public limited company (Ex. 595). It was granted the certificate for commencement of business on 28th October 1949 (Ex. 595/3). Its paid-up capital was Rs. 50,000 made up of 5,000 fully paid shares of Rs. 10 each (Ex. 595/3). Its authorised capital at the time of incorporation was Rs. 5 lacs. This was increased to 25 lacs in May 1951 (Ex. 595/3).

In July 1952 the paid-up capital was increased from Rs. 50,000 to Rs. 5,00,000 by making a further allotment of 45,000 shares of Rs. 10 each to the following (Ex. 595/3) :

1. Dalmia Investment Ltd.	..	..	..	..	..	..	21,400
2. Dalmia Jain Collieries Ltd.	..	..	..	..	..	..	9,000
3. Maheshpur Collieries Ltd.	..	..	..	..	..	..	5,000
4. Smt. Rama Jain	..	..	..	..	..	..	9,600
							<hr/> 45,000 <hr/>

NOTE : Smt. Rama Jain is the wife of Shanti Prasad Jain. Dalmia Investment Ltd., Dalmia Jain Collieries Ltd., and Maheshpur Collieries Ltd., were during 1952 under the control of Shanti Prasad Jain.

A sum of Rs. 2 crores was due by Ashoka Agencies Ltd. to D.C.P.M. as on 28th February 1951 (Ex. 577/4). The above advance of Rs. 2 crores was unsecured and carried interest at 6% (Exs. 595, 576-A and 238). This amount was transferred to the account of Ashoka Agencies Ltd. from the Ashoka Marketing Co. Ltd., as on 15th October 1950 (Ex. 596). Between October 1950 and September 1952 Ashoka Agencies Ltd. cleared off the advance of Rs. 2 crores due by it to D.C.P.M.

The following were the directors (Ex. 601/5) :

J. M. Gupta

V. P. Gupta

M. S. Lamba

Raizada Manmohanlal

P. P. Gupta.

[Of the above J. M. Gupta was closely connected with D.C.P.M. being the manager of D.C.P.M., Delhi Branch.]

On 29-9-50 the company was converted into a private limited company (Ex. 601/5).

The following amounts were due by Vyapari Ltd., to D.C.P.M. at the close of the financial years of D.C.P.M.

								Rs.	
28-2-49	..	..	..	..	..	..	..	33,88,527	(Ex. 496/4 & 6)
28-2-50	..	..	..	..	..	..	..	1,03,32,791	(Ex. 593/2)
28-2-51	..	..	..	..	..	..	..	Nil	(Ex. 577)

The above advances due to D.C.P.M. were unsecured. D.C.P.M. charged interest on the outstandings at the rate of 6% per annum (Exs. 576A & 497, 237, 238).

The amounts borrowed by Vyapari Ltd., from D.C.P.M. were in its turn advanced to J. Dalmia. In the books of J. Dalmia a sum of Rs. 88,32,411 appeared to the credit of the account of Vyapari Ltd., in or about August/September 1948. The above amount of Rs. 88,32,411 included the transfer of Rs. 87,49,499 from D.C.P.M.'s account to the account of Vyapari Ltd., in the books of J. Dalmia. By 4-9-50 to account of Vyapari Ltd., was closed in the books of J. Dalmia by transferring a large number of investments and the amounts due by J. Dalmia to other companies.

In the absence of the books of D.C.P.M. it is not known how the account of Vyapari Ltd., was settled. It may however be added here that Vyapari Ltd., is a concern under the control of J. Dalmia.

H. Dalmia Investment Co. Ltd.

D.C.P.M. advanced moneys to Dalmia Investment Co. Ltd., and the amounts due by Dalmia Investment Co. Ltd., to D.C.P.M. as on 31-12-46, 31-12-47 and at the close of the financial years of D.C.P.M. were as follows :

								Rs.	
31-12-46	..	..	..	..	..	..	..	36,84,271	(Ex. 596/51)
31-12-47	..	..	..	..	..	..	..	1,05,85,503	(Ex. 596/54)
29-2-48	..	..	..	..	..	..	..	86,69,492	(Ex. 496/70, 72, 78).
28-2-49	..	..	..	..	..	..	..	55,57,849	(Ex. 496/4)
28-2-50	..	..	..	..	..	..	..	74,250	(Ex. 593/2)
28-2-51	..	..	..	..	..	..	..	74,250	(Ex. 577/2)

The amount of Rs. 36,84,271 due by Dalmia Investment Co. Ltd., included the value of the following shares transferred to this company by D.C.P.M. or through D.C.P.M. because the amount of Rs. 31,15,000 was

credited to the account of D.C.P.M. in the books of Dalmia Investment Co. Ltd. :

31st March, 1946

Rs.

Cost of 10,000 Pref. Shares of Dalmia Jain & Co. Ltd. 10,00,000 (Ex. 596/P. 49)

31st October, 1946

Cost of 30,000 Preference shares in Allenberry & Co. Ltd. 5,15,000 (Ex. 596/50)

31st December, 1946

Cost of 20,000 Preference shares of Govan Bros. Ltd. 16,00,000 (Ex. 596/51)

31,15,000

The balance due by Dalmia Investment Co. Ltd.; which increased to Rs. 1,05,85,503 as on 31-12-47 was mainly due to the following transactions : (Ex. 594/54).

31-12-47

Cost of 11,000 shares of M.D.M. Co. Ltd. at Rs. 490 per share 53,90,000 (Ex. 596/53)

Cost of 14,000 shares of S.S.B. Mills Ltd. at Rs. 290 per share 40,60,000 (Ex. 596/53)

Cost of 37,500 shares of Allenberry & Co. Ltd. at Rs. 10 per share. 3,75,000 (Ex. 596/54)

98,25,000

Less :

31-12-47

Amount of hundi drawn by J. Dalmia on D.C.P.M. in favour of Dalmia Investment Co. Ltd. (Ex. 596/51) (The amount of the Hundi was debited to D.C.P.M. account) 15,00,000 (Ex. 596/53)

Sale of 28,055 shares of Bharat Collieries Ltd. @Rs. 2-10 per share 3,54,543 (Ex. 596/54)

Sale of 2,100 shares of Albion Jute Mills Ltd. at Rs. 437-12-0 and 8,152 shares of Dehri-Rohtas Light Railway Co. Ltd. at Rs. 16 per share 10,49,707 (Ex. 596/54)

29,04,250

As a result of the above and other transactions the amount due by Dalmia Investment Co. Ltd., to D.C.P.M. increased from Rs. 36,84,271 as on 31-12-46 to Rs. 1,05,85,503 as on 31-12-47 (Ex. 596/51, 54 and 55).

Between January and February 1948 the following shares were transferred by Dalmia Investment Co. Ltd. and the amount was debited to D.C.P.M. account in its books :

28-1-48

1,40,747 shares of Rohtas Industries Ltd. }
2,755 shares of S.K.G. Sugar Mills }
7,420 shares of Bharat Bank Ltd. } 16,55,313 (Ex. 596/55)
2,079 shares of Bharat Bank Ltd., p.p. 2's }

28-2-48

2,270 Preference shares of Rohtas Industries Ltd. 3,14,159 Do.

19,69,472

The above and some other transactions had the effect of reducing the indebtedness of the Dalmia Investment Co. Ltd., to D.C.P.M. as on 29-9-48 to Rs. 86,69,492 (Ex. 496/4).

Between March 1948 and February 1949 there were a large number of transactions between D.C.P.M. and Dalmia Investment Co. Ltd., relating to the transfer of shares and the adjustment of hundies which brought down the indebtedness of Dalmia Investment Co. Ltd., to D.C.P.M. from Rs. 86,69,492 to Rs. 55,57,849 (Ex. 596/56). Some of the larger transactions are set out below :

31-8-48

By credi balance of S. K. G. Sugar Mills transferred and credited to D.C.P.M.'s account in the books of Dalmia Investment Co. Ltd.	Rs.
.. .. .	25,15,760 (Ex. 596/56)

31-12-48

To Demand on D. C. P. M. by R. Dalmia (accounts debited to D. C. P. M. account in the books of Dalmia Investment Co. Ltd.)	.. ..	18,95,680 (Ex. 596/60)
To Demand in draf drawn on D.C.P.M. by Rashtriya Investors Ltd., in favour of Dalmia Investment Co. Ltd.	.. ..	57,00,000 (Ex. 595 60)

NOTE : The nature and details of these transactions are not available. The inference is that these *hundies* were drawn in favour of Dalmia Investment Co. Ltd., because Dalmia Investment Co. Ltd. transferred some of the shares to R. Dalmia and Rashtriya Investors Ltd.

28-2-49

Rs. 31,85,000 was credited to D.C.P.M., New Delhi in the books of the Dalmia Investment Co. Ltd., in respect of :—
(Ex. 596/61).

	Rs.
(a) Demand draft No. 2, dated 28-2-49 drawn by J. Dalmia in favour of Vyapari Ltd., on Dalmia Investment Co. Ltd. presented through D.C.M.P.	23,85,000
(b) Demand draft No. 1, dated 28-2-49 drawn by J. Dalmia in favour of Vyapari Ltd., on Dalmia Investment Co. Ltd. Presented through D.C.M.P.	8,00,000
	<u>31,85,000</u>

On 28th September, 1949 Rs. 32,98,161 was debited to the D.C.P.M. account in the books of Dalmia Investment Co. Ltd., in respect of a demand draft drawn by J. Dalmia in favour of Dalmia Investment Co. Ltd., sent to D.C.P.M. for collection (Ex. 596/63).

On 30th November 1949 Rs. 6,07,821 was credited to the account of D.C.P.M. in the books of Dalmia Investment Co. Ltd. in respect of the credit balances of Bhuriguraj and Yogiraj and Dalmia Jain Charity Trusts transferred (Ex. 596/64).

The advances were unsecured and carried interest at 4½% on the amounts outstanding (Exs. 596/40, 57, 58, 59 and 576A).

The effect of all these entries, and also a number of other entries, was that the indebtedness of Dalmia Investment Co. Ltd., to D.C.P.M. was brought down to Rs. 74,250.

Dalmia Investment Co. Ltd. is said to have been allotted to the share of R. Dalmia (Ex. S. 75). In 1950 the shares therein were sold by R. Dalmia and his concerns to Shanti Prasad Jain and his concerns.

I. Allenberry & Co. Ltd.

In 1945 the D. J. Group acquired control of Allenberry & Co. Ltd., and since then it has been under the effective control of the D. J. Group and later of R. Dalmia.

D.C.P.M. financed Allenberry & Co. Ltd., from time to time (Exs. 496, 593 & 577). In the absence of the books of account of D.C.P.M. and Allenberry & Co. Ltd., it is not possible to find out the details of the amounts borrowed from D.C.P.M. But on the date of the close of the following financial years of D.C.P.M. the amounts due by Allenberry & Co. Ltd., to D.C.P.M. were as follows :

	Rs.							
As on 28-2-49	1,08,34,817 (Ex. 496)
As on 28-2-50	53,98,713 (Ex. 593)
As on 28-2-51	7,31,050 (Ex. 577)

On 30th June 1951 a sum of Rs. 1,35,25,417-1-0 was due by Allenberry to D. J. Airways (Ex. 5, 5/1, Ex. 26/18). Allenberry, however, expressed its inability to repay this amount to D. J. Airways (Ex. 5/1). D.C.P.M. thereupon took over the above indebtedness of Allenberry to D. J. Airways by an agreement (Ex. 5), dated 5th August 1951 between D. J. Airways and D.C.P.M.

This amount of Rs. 1,35,25,417-1-0 was repayable by D.C.P.M. to D. J. Airways in annual instalments spread over 19 years without any interest. D.C.P.M. was thus benefited by way of interest charges amounting to Rs. 71,44,988.

Thus Allenberry became indebted to D.C.P.M. to the extent of Rs. 1,35,25,417-1-0 (Ex. 5/1). This loan carried interest at 4½%. Under Ex. 202 D.C.P.M. granted the following concessions to Allenberry in respect of the repayment of the amount of Rs. 1,35,25,417-1-0 viz.,

- (a) D.C.P.M. agreed not to charge interest to Allenberry on this amount.
- (b) Allenberry was allowed to repay D.C.P.M. by instalments unspecified both as to the amount and as to time, except that the total was to be repaid in 20 years. Thus the benefit of Rs. 71,44,488 repaid by D.C.P.M. was transferred to Allenberry under Ex. 202.

D.C.P.M. went into liquidation on 18th February 1953 (Ex. 225). Before going into liquidation, viz., on 18th February 1953, D.C.P.M. transferred the amount of Rs. 99,16,371 due by Allenberry & Co. as on that date to D. J. Aviation, another company under the control of R. Dalmia towards the indebtedness of D.C.P.M. to D. J. Aviation.

D. J. Aviation changed its name to Asia Udyog Ltd., on 23-5-53 and Allenberry thus became a debtor of Asia Udyog Ltd., in place of D.C.P.M.

J. Rashtriya Investors Ltd.

Rashtriya Investors Ltd., was incorporated as a private limited company on 28th August, 1948 with an authorised capital of Rs. 5 lacs divided into 5,000 shares of Rs. 100 each, and paid-up capital of Rs. 3,000 made up of 200 shares of Rs. 15 each (Ex. 601/5). Later in 1949 the paid up capital was increased from Rs. 3,000 to Rs. 7,000 by calling up a further Rs. 20 per share (Ex. 601/5).

According to the initial return of allotments filed with the Registrar, the shares were allotted to the following companies which were at the time under the effective control of R. Dalmia.

					Rs.
1. Dalmia Investment Co. Ltd.	..	..	..	100 shares	1,500
2. D.C.M.P.	..	..	..	100 shares	1,500
				<u>200</u>	<u>3,000</u>

As on 31st May, 1951, 100 shares held by Dalmia Investment Co. Ltd., were transferred to Govan Bros. Ltd., and thus the capital of this company was held by D.C.P.M. and Govan Bros. Ltd. R. Dalmia was solely interested in both these companies (Ex. 601).

At the time of incorporation, Jagmohanlal Raizada was the Director and S. N. Dudani was the Secretary. Jagmohanlal Raizada was the director of D.C.P.M. from 15-1-49 to 24-5-50 (Ex. 601).

On 4th September 1952, the company was taken into liquidation and was dissolved in 17-6-53 (Ex. 601). S. K. Sanghi was appointed the liquidator.

He was also the liquidator of the following companies under the control of R. Dalmia, all of which were taken into voluntary liquidation between the years 1951 to 1953.

					Date of liquidation.
General Marketing Co. (P) Ltd.	..	..	..	..	7-2-53 (Ex. 856)
Premier Merchants (P) Ltd.	..	..	..	..	7-2-53 (Ex. 856)
Rashtriya Financial Corporation Ltd.	..	..	..	..	4-9-52 (Ex. 601)
Gwalior Bank Ltd.	..	..	..	..	27-12-51 (Ex. 604)

The liquidators statement of account filed on 23-12-52 with the Registrar of Companies shows the following (Ex. 601):—

(a) 31-12-52

					Rs.	As.	P.
Cash in-hand	..	..	..	..	259	8	0
Realised from D.C.P.M., Delhi	..	..	..	..	3,245	0	6
Realised from Govan Bros. Ltd.	..	..	..	..	3,244	13	0
Realised from Rashtriya Agencies Ltd., Delhi	..	..	..	..	50	0	0
					<u>6,799</u>	<u>6</u>	<u>3</u>

(b) Disbursements :

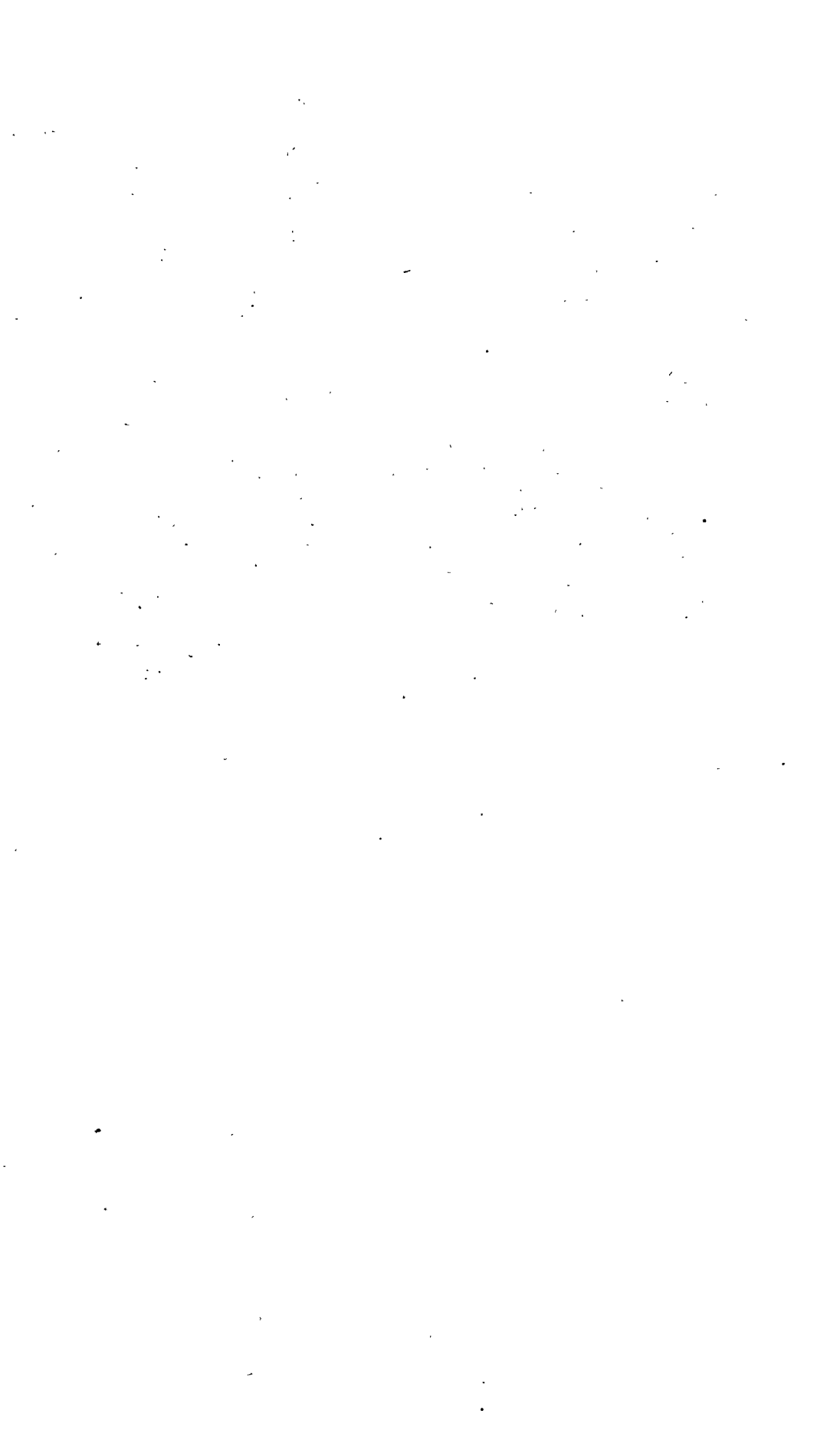
Return of capital to D.C.M.P. 100 shares @ Rs. 32-8-0 per share	..	..	..	..	3,250	0	0
Return of capital to Govan Bros. Ltd. 100 shares at Rs. 32-8-0 per share	..	..	..	..	3,250	0	0
Liquidator's fee	..	..	..	..	100	0	0
Miscellaneous expenditure	..	..	..	..	199	6	3
					<u>6,799</u>	<u>6</u>	<u>3</u>

At the time winding-up, S. N. Dudani was the Director of Rashtriya Investors Ltd. He was also the Secretary of D.C.P.M. from 20-9-48 onwards. The company was finally dissolved on 17-6-53 (Ex. 601).

As on 28-2-49, an amount of Rs. 56,95,398 was shown as due to D.C.P.M. by Rashtriya Investors Ltd. In the absence of account books the nature and details of this credit balance in the books of Rashtriya Investors Ltd. are not known. However, a credit of Rs. 57 lacs was raised on 31-12-48 in this account on account of one Demand Draft drawn by Rashtriya Investors Ltd., on D.C.P.M., New Delhi favouring Dalmia Investment Co. Ltd. (Ex. 596).

In the absence of the account books of D.C.P.M., it is not known how this amount was adjusted. D.C.P.M. charged interest at 6% on the loan advanced. (Ex. 576A).

On the closing dates of the accounting years of D.C.P.M. *viz.*, as on 28-2-50 (Ex. 503) and 28-2-51 (Ex. 577) there does not appear to be any amount either owing by or to Rashtriya Investors Ltd. In the absence of account books or available records relating to the period commencing 1-3-51 till liquidation the extent of the financial dealings is not known. However, in the available records there is an undated certificate by the Liquidators of Rashtriya Investors Ltd., stating that there is nothing due to them or due by them to D.C.P.M. (in voluntary liquidation). The certificate mentions that the account of D.C.P.M. (in voluntary liquidation) stands fully adjusted in its books. It is not known how this was adjusted (Ex. 229B).



CHAPTER VII

INTER-COMPANY INVESTMENTS

We will now examine the investments made by and through D.C.P.M.

D.C.P.M. bought and sold shares of Joint Stock Companies mostly under the control of the D. J. Group and later of R. Dalmia. The primary objects of these investments were—

- (i) to acquire the control of companies outside the D.J. Group, such as, Bennett Coleman & Co., S.S.B. Mills Ltd., and M.D.M. Co. Ltd.;
- (ii) having acquired control, the shares of the acquired companies were transferred to the public limited companies, banks and Insurance companies towards repayment of the funds borrowed;
- (iii) after acquiring control of outside concerns, to derive benefits in the form of selling and managing agency commission and in some cases, compensation for the benefit of R. Dalmia and his concerns;
- (iv) to control the overall taxation liability of the Group by wrongful diversion of taxable profits from other companies to D.C.P.M. and thereafter creating fictitious losses to be set off against the taxable profits so diverted;
- (v) to adjust the indebtedness of D.C.P.M. to other companies and *vice versa* by making purchases and sales at rates manipulated to suit the convenience of the D.J. Group and later of R. Dalmia;
- (vi) to retain the control of the D.J. Group and later R. Dalmia, through the agency of D.C.P.M., over the companies in the shares of which large moneys were invested by D.C.P.M.;
- (vii) to window-dress the balance sheets of sister companies.

The following statement will show the borrowings of the companies from banks, Insurance companies and other public companies; investments held and the percentage of the investments on the paid-up capital of D.C.P.M. :

Balance sheet as at						Total Borrowings	Total Invest- ments	Percentage to the paid- up capital of D.C.M.P.
28-2-1947	..	..	..	..	..	3,58,92,289	3,32,54,565	465.29%
28-2-1948	..	..	..	..	..	5,09,05,289	2,01,10,952	402.48%
28-2-1949	..	..	..	..	..	6,75,57,073	92,47,408	184.99%
28-2-1950	..	..	..	..	..	6,67,96,357	2,30,01,468	460.00%
28-2-1951	..	..	..	..	..	7,63,25,790	45,37,849	90.76%

NOTE.—Most of the shares were not quoted in any Stock Exchange.

We set out details of the investments, to the extent available in the absence of books and records of the company, in Annexure 'A' at page 23 of the Statement of Matters. We do not intend to burden our report with them.

The profit or loss on the sale of the investments by D.C.P.M. from 1946 to 1951 is given below :—

			Profit on sale of investment	Loss on sale of investments	Speculation loss	Total loss
28-2-1946	..	..	1,80,670	—	—	—
28-2-1947	..	..	5,31,173	—	—	—
29-2-1948	..	..	—	—	—	12,99,601*
28-2-1949	..	..	—	13,85,027	4,75,392	18,60,419
28-2-1950	..	..	—	2,82,082	2,04,751	4,86,833
28-2-1951	..	..	—	24,14,080	19,48,485	43,62,565
			7,11,813	53,80,790	26,28,628	80,09,418

*This amount includes the loss of Rs. 12 lacs on transfer of 500 shares of Dharangdhra Trading Co. Ltd., to Shanti Prasad Jain.

NOTE.—Figures of speculation losses in respect of three years' only are available.

The companies, in the shares of which D.C.P.M. had invested funds, were mostly companies in the same group. In most of the cases no cash payments were made either for purchase or for sale : it was done by book adjustment. Also, the company did not get the shares registered in its own name. For the most part they were kept in blank transfer. The rates at which the shares were bought and sold were manipulated to suit the convenience of the D.J. Group and later R. Dalmia.

The same type of shares were bought at varying rates at short intervals, e.g.,

- On 20-2-1949, 18,812 Conversion Shares of S.S.B. Mills Ltd., were sold at Rs. 275 per share and 8,120 Conversion Shares of M.D.M. Co. Ltd., at Rs. 455 per share to Rashtriya Financial Corporation Ltd. Two months later, the same type of shares were repurchased by D.C.P.M. at Rs. 200 and Rs. 300 respectively.
- In February 1949, 42,850 'B' Class shares and 4,613 'A' Class shares of LESCO were sold at Rs. 40 and Rs. 400 respectively to Rashtriya Financial Corporation Ltd. Two months later, the same type of shares were repurchased by D.C.P.M. at less than one-third of the sale price, viz, Rs. 13 and Rs. 10 respectively.
- On 31st March 1948, D.C.P.M. sold 9,000 shares of Bennett Coleman & Co. Ltd., the Gwalior Bank Ltd., for Rs. 50,42,250 and on 31st March 1949 sold 2,250 shares to Bharat Journals Ltd for Rs. 12,60,562 both aggregating Rs. 63,02,012 whereas on 31st May 1949, Rashtriya Financial Corporation Ltd., transferred 11,250 shares of Bennett Coleman & Co. Ltd., to LESCO for Rs. 22,50,000 only.

The same block of shares were included as assets in the Balance sheet of one company and within a few months thereafter they appeared as assets in the Balance sheet of another company, as will be seen from the following :

- The financial year of D.C.P.M. ended on 28th February, whereas that of Dalmia Jain Airways Ltd., ended on 30th June. As on 28th February, 1950, D.C.P.M. was holding 32,812 shares of S.S.B. Mills Ltd, valued at Rs. 65,62,400 and 14,128

shares of M.D.M. Co. Ltd., valued at Rs. 42,38,400. These shares were shown as 'Investments' in the balance sheet of D.C.P.M. as on 28th February, 1950.

On 23rd March 1950, D.C.P.M. transferred 21,800 shares of S.S.B. Mills Ltd., and 7,200 shares of M.D.M. Co. Ltd., valued at Rs. 65,20,000 to Dalmia Jain Airways Ltd. These shares were included as 'Investments' in the balance sheet of Dalmia Jain Airways Ltd., as on 30th June, 1950.

On 28th February 1951, these shares went from Dalmia Jain Airways Ltd., to Rashtriya Financial Corporation Ltd., through D.C.P.M. The indebtedness of D.C.P.M. to Dalmia Jain Airways Ltd., to the extent of Rs. 65,20,000 was thus restored. At the same time, Rashtriya Financial Corporation Ltd., a private limited company with a paid-up capital of Rs. 4,000 became indebted to D.C.P.M. to the extent of Rs. 65,20,000.

The same shares again came to D.C.P.M. and it received dividends in 1952 by way of return of capital from the Liquidators of S.S.B. Mills Ltd., and M.D.M. Co. Ltd.

- (ii) As on 28th February 1950, D.C.P.M. was holding 11,250 'A' Class shares and 68,172 'B' Class shares of LESCO and 91,489 shares of Gwalior Bank Ltd. Of this lot, on 29th April 1950, 7,119 'A' Class shares and 20,514 'B' Class and 91,489 shares of Gwalior Bank Ltd., were transferred to Dalmia Jain Aviation Ltd., and were included as 'INVESTMENTS' in the balance sheets of Dalmia Jain Aviation Ltd. as on 31st July, 1950. On 28-2-1951, these shares were re-transferred at cost to D.C.P.M. These shares did not appear in the balance sheet of D.C.P.M. as on 28th February, 1951, as they had been transferred to some other company.

Bennett Coleman & Co. was a private limited company and it owned a first class printing press. Its paid-up capital was Rs. 38,79,000 consisting of 38,053 Preference Shares of Rs. 100 each and 7,370 Ordinary Shares of Rs. 10 each (Ex. 600). As on 31-12-1945, Bennett Coleman & Co. Ltd., had reserves representing accumulated profits to the extent of Rs. 29,97,347. It also had a reserve of nearly Rs. 53 lakhs for taxation and E.P.T. Deposits. This shows that Bennett Coleman & Co. Ltd., was then in a sound financial position.

Bennett Coleman & Co. Ltd. held, as on 31-12-1946, Government Securities of the face value of Rs. 30,57,000 and also cash and Bank balances to the extent of Rs. 14,38,591. This indicates that the company's liquid resources were very satisfactory.

On 2-4-1946, D.C.P.M. paid a sum of Rs. 99,92,100 by cheque to Bennett Coleman & Co. Ltd., who were acting as agents for the shareholders towards the cost of its shares purchased by D.C.P.M. (Ex. 493/5). When the payment of Rs. 99,92,100 was made by D.C.P.M. for acquiring its shares, D.C.P.M.'s account with the Bharat Bank showed an overdraft of Rs. 79,42,996. It is, therefore, clear that for acquiring the shares of Bennett Coleman & Co. Ltd., D.C.P.M. used the funds of Bharat Bank in the first instance (Ex. 493/5). Later, this overdraft of Rs. 79,42,996 was cleared by D.C.P.M. by receiving moneys from other concerns (Ex. 493/6).

On 25th April, 1946, Bharat Bank Ltd. purchased 15,000 Preference Shares of Bennett Coleman & Co. Ltd. at Rs. 580 per share from D.C.P.M. for Rs. 87,00,000.

After nearly six months, i.e., 30th September, 1946, this lot of 15,000 shares was sold to the Gwalior Bank Ltd., another concern of the D.J. Group, at Rs. 560 per share i.e., for Rs. 84 lakhs, resulting in a loss of Rs. 3 lakhs to the Bharat Bank. The Bharat Bank Ltd., received a dividend of Rs. 3,00,000.

The amount of Rs. 84 lakhs due to the Bharat Bank Ltd., by the Gwalior Bank Ltd. was adjusted against the purchase from the latter of Government Securities of the face value of Rs. 81 lakhs on the same date.

Gwalior Bank

The Gwalior Bank was a D.J. Group concern. It went into voluntary liquidation, the liquidator being S. K. Sanghi, an employee of Bennett Coleman & Co. Ltd. By a resolution passed at the Directors' meeting held on 2nd July, 1953, its Books of Accounts and records were destroyed by the Delhi Glass Works Ltd., which company had earlier taken over its assets and liabilities under Section 208C of the Indian Companies Act, 1913.

The balance sheets of the Gwalior Bank as at 30th June, 1946 and 1947 are not available. From the available Balance Sheet as at 30th June, 1948, it is found that the paid-up capital of the Gwalior Bank was Rs. 12,46,437 and that it had total Deposits of Rs. 89,90,287.

The Directors of the Gwalior Bank in 1948 were :—

- (1) P. L. Sah who is now Secretary of Bennett Coleman & Co. Ltd.;
- (2) F. L. Kothari in whose name, in 1949, 7,48,800 shares of Rs. 10 each of Jaipur Udyog Ltd. were registered; and
- (3) Megh Raj Agarwal,

The Manager of the Gwalior Bank at that time was S. K. Sanghi.

On 31st March, 1947, Bharat Bank Ltd. repurchased this very lot of 15,000 shares from the Gwalior Bank Ltd. and on the same day sold it to S.S.B. Mills Ltd. for a sum of Rs. 84 lakhs.

The amount due from the S.S.B. Mills was set off against the amount payable to the Gwalior Bank Ltd.

Thus the total investment by the D.J. Group in April, 1946 in acquiring the control of Bennett Coleman & Co. Ltd. was Rs. 1,86,92,100 as follows :—

	Rs.
Invested by D.C.P.M.	99,92,100
Invested by Bharat Bank Ltd.	87,00,000
	<hr/> 1,86,92,100

In order to liquidate its overdraft, D.C.P.M. thereafter transferred the shares of Bennett Coleman & Co. Ltd., acquired by it for Rs. 99,92,100 to other companies as follows :—

- (a) On 30-4-1946, 4,500 shares of Bennett Coleman were transferred to Bharat Insurance Co. Ltd., for a sum of Rs. 26,10,100 at the rate of Rs. 580 per share. These shares were resold by Bharat Insurance Co. Ltd., before the end of the year for a sum of Rs. 25,42,000 resulting in a loss of Rs. 67,500 (Ex. 366/58).
- (b) On or about 26-4-1946, 5,000 Preference Shares of Bennett Coleman & Co. Ltd. were transferred to Bharat Fire & General Insurance Co. Ltd., for a sum of Rs. 29 lakhs (Ex. 848/52). This transaction was negotiated on 3-4-1946 but actually the amount was paid to D.C.P.M. on 29-4-1946 hence the interest for the intervening period from 3-4-1946 to 29-4-1946 amounting to Rs. 6,396 was also paid to D.C.P.M. (Ex. 607/408). These shares continued with Bharat Fire & General Insurance Co. Ltd. till 27-12-1946 when they were retransferred to D.C.P.M. for a price of Rs. 27,65,000. This resulted in a loss of Rs. 1,50,000 to Bharat Fire & General Insurance Co. Ltd.
- (c) The shares purchased by D.C.P.M. from Bharat Insurance Co. Ltd., and Bharat Fire & General Insurance Co. Ltd., among others shares were transferred to the following companies in December, 1946 :
 - (i) 9,500 Pref. Shares at Rs. 557 per share for a sum of Rs. 52,92,500 on or about 27-12-1946 to S.S.B. Mills Ltd.
 - (ii) 6,850 Pref. Shares at Rs. 550 per share for a sum of Rs. 37,67,500 to M.D.M. Co. Ltd.

These shares continued with the S.S.B. Mills and M.D.M. Co. Ltd. till at least 31-3-1950 and probably up to 16th November, 1951. The 15,000 shares which were purchased by S.S.B. Mills Ltd. on 31st March, 1947 do not appear in the balance sheet of S.S.B. Mills Ltd. The inference is that this block of 15,000 shares was transferred by the S.S.B. Mills Ltd. on that very day to some other concern of the D.J. Group most probably to D.C.P.M. In the Statement of Investments purchased and sold by

D.C.P.M. during the financial year 1948-49, the 15,000 Pref. Shares of Bennett Coleman & Co. Ltd. appear in D.C.P.M.'s account as on 1st March, 1948, at a cost of Rs. 84,03,750. This shows that the block of 15,000 shares purchased by the Bharat Bank Ltd. and transferred to the Gwalior Bank and thereafter to S.S.B. Mills Ltd., ultimately came into the possession of D.C.P.M.

During the year 1948-49, 5,700 Ordinary Shares for Rs. 3,13,500 and 825 Pref. Shares for Rs. 4,53,750 were purchased by D.C.P.M. from the D.J. Charity Trust and 10 Pref. Shares for Rs. 3,609 from others. Thus the D.C.P.M. holding at one time increased to 15,835 Pref. Shares and 5,700 Ordinary Shares of the value of Rs. 91,74,609.

During the same year *i.e.* 1948-49, 2,100 Ordinary Shares were sold to R. Dalmia for Rs. 1,15,500 and 9,000 Pref. Shares to the Gwalior Bank Ltd. for Rs. 50,42,250 and 10 Pref. Shares to Dalmia Jain & Co. Ltd. for Rs. 3,609. Thus the holding of D.C.P.M. as on 28th February, 1949 was reduced to Rs. 40,13,250.

	Rs.
6,285 Pref. shares for	38,15,250
3,600 Ord. shares for	1,98,000
	<hr/> 40,12,250

During the year 1949-50, *i.e.*, on 31st May, 1949, 2,250 Pref. shares were further transferred to the Bharat Journals Ltd. and R. Dalmia concern, for a sum of Rs. 12,50,562. Thus D.C.P.M.'s holding as on 28th February, 1950 was reduced to 4,575 Pref. shares for Rs. 25,54,687-8-0 and 3,600 Ord. shares for Rs. 2,98,000.

On the same day, *i.e.*, on 31st May, 1949, Rashtriya Financial Corporation Ltd., transferred 11,250 Pref. shares of Bennett Coleman & Co. Ltd. for a sum of Rs. 22,50,000 to LESCO through D.C.P.M. It is, therefore, evident that out of 11,250 shares 9,000 Pref. shares were acquired by Rashtriya Financial Corporation Ltd. earlier and the balance, 2,250, on the same day. The inference is that the same lot of 11,250 shares had reached LESCO for Rs. 22,50,000, through Rashtriya Financial Corporation Ltd.

Rashtriya Financial Corporation Ltd. an R. Dalmia concern went into liquidation on 4-9-1952. Its records are not available.

Between December, 1947, and January, 1949, D.C.P.M., Bombay further purchased 5,788 Pref. shares for Rs. 16,46,472 and 1,620 Ord. shares for Rs. 32,400.

On 15th January, 1949, D.C.P.M. Bombay sent Debit Advices Nos. 2044 and 2045 as at 28-2-1948 to its Head Office at Dalmianagar for Rs. 16,42,863-5-0 in respect of the purchase of 5,778 Pref. shares and Rs. 32,400 in respect of 1,620 Ord. shares; Rs. 3,609 the cost of the remaining 10 Pref. shares was transferred later, probably in December, 1948.

From the available records it is found that R. Dalmia invested Rs. 2,03,70,972-8-0 in the shares of Bennett Coleman & Co. Ltd. as discussed in the preceding paragraphs.

The D. J. Group and later R. Dalmia had effective control of the following companies at all relevant times :—

Bharat Bank Ltd., Bharat Insurance Co. Ltd., Bharat Fire & General Insurance Co. Ltd., S. S. B. Mills Ltd., M. D. M. Co. Ltd., Rashtriya Financial Corporation Ltd., Gwalior Bank Ltd., and LESCO.

It was, therefore, possible for the D. J. Group and R. Dalmia to use the funds of these companies for their own benefit, and also to manipulate the rates at which shares were to be purchased and sold.

After it was acquired, Bennett Coleman & Co. Ltd., declared dividends only for two years, i.e., for the years ending 31st December, 1946 and 1947 at 35 per cent and 22½ per cent respectively (Ex. 601/14.15) on Preference and Ordinary shares, but no dividend was declared for the years 1948 to 1954. In December 1955, however, arrears of dividends on Pref. shares were declared and the sum of Rs. 26,63,710 was paid to B.U.A., which company was under the effective control of R. Dalmia (Ex. 600/14/Vol. II).

After the D. J. Group acquired control of Bennett Coleman & Co. Ltd. Government securities of the face value of Rs. 30 lacs held by it were sold.

Bennett Coleman & Co. Ltd., was financed by D.C.P.M. The amounts due by Bennett Coleman & Co. Ltd., to D.C.P.M. are set out below :—

	Rs.
(i) On 28-2-1949	41,34,226 (Ex. 496/9 & 575)
(ii) On 28-2-1950	71,57,462 (Ex. 593/4)
(iii) On 28-2-1951	69,75,868 (Ex. 577)
(iv) On 30-10-1951	94,41,792 (Ex. 600/90 & 596)

S.S.B. Mills and M.D.M. Co. Ltd.

The acquisition of shares of S. S. B. Mills Ltd., and M. D. M. Co. Ltd., by the D. J. Group, through D.C.P.M. has been dealt with in detail in the chapter relating to the two mill companies. There is, therefore, no need to say anything more here about these two companies.

According to Shanti Prasad Jain and J. Dalmia, there was nothing wrong in acquiring companies and then selling a portion of the shares to other interested parties.

Counsel for Shanti Prasad Jain submitted a list of "Normal Commercial Practices" referred to in the written statement of his client. The Commission considered this at its meeting held on 21st December, 1961. Since out of the 17th-items of such practices referred to in the list, the following have bearing on the transactions discussed in this Chapter. We briefly indicate them below with the Commission's findings on them.

<i>Normal Commercial Practices referred to by Shanti Prasad Jain</i>	<i>Commissioner's findings thereon</i>
(1)	(2)
<p>3. Inter-company Investments and Inter-company Transfers between companies under the same management or belonging to the same group are a normal and necessary features of Corporate management as they assist in the economic and industrial development of the country.</p>	<p>The Commission is prepared to concede that Inter-company investments, loans and transfers between companies under the same management or belonging to the same group do take place and that in appropriate circumstances that is proper and justifiable; and that when this is the case the practice can be said to be normal.</p> <p>The Commission does not admit that it is normal in that sense when the circumstances of a particular case do not justify a particular investment, transfer or loan.</p> <p>The Commission also does not admit that in every case the practice assists in the economic and industrial development of the country. In the opinion of the Commission each case must depend on its own facts.</p>
<p>4. It is a matter of common occurrence that when a company is added to a group of companies under the common management or belonging to the same group, generally investment in the shares of such a new company are distributed amongst the various companies of that group.</p>	<p>The Commission accepts that when a company is added to a group of companies under common management or belongs to the same group then the shares of a new company are often distributed amongst the various companies of that group. The Commission concedes that in given circumstances this practice would be proper and justifiable. Whether it is proper and justifiable will depend on the circumstances of each particular case. The Commission does not accept that this practice is necessarily proper.</p>
<p>9. There is nothing wrong or unusual in Banks and Insurance companies under the same management giving loans to companies under the same management, or investing its funds in shares of companies under the same management.</p>	<p>The answer is the same as No. 8 so far as the Banks are concerned.</p> <p>The instance of insurance companies is not accepted so far as loans are concerned but is accepted as above regarding the rest.</p>

(No. 8 in the list furnished by the counsel is reproduced below together with the Commission's findings thereon).

(1)

(2)

8.

Advances, loans and deposits from one company to another under the same management, with or without security, were and are normal and usual features of company management in his country.

This is another variation of No. 3. It is accepted that advances, loans and deposits are made from one company to another under the same management and that this is often done without security.

It is not admitted that this is a normal feature as each case must depend on its own facts. In certain cases the act may be justifiable proper, in others not.

10.

There is nothing wrong in investment, holding or share-trading companies in making investments and/or holding shares of values beyond the paid-up capital of the company concerned. It was a normal practice for such companies as the relevant time to make such investments.

It is accepted that investment, holding and share-trading companies make investments and hold shares of value beyond the paid-up capital of the company concerned.

It is not accepted that this is always or necessarily a proper practice. Here again each case must depend on its own facts.

14.

There was nothing wrong or improper in a company, and particularly a company frequently dealing in the sale and purchase of share, in holding its shares in the names of certain individuals or in blank transfers, and that was a normal commercial practice.

It is accepted that there is a practice in which a company frequently dealing in the sale and purchase of shares holds such shares in the names of individuals or in blank transfers.

It is further accepted that the practice is not necessarily wrong or improper in itself.

It is not accepted that the practice is always proper. Each case must depend on its own circumstances.

The above instances, a few amongst several others, certainly do not disclose a case of economic growth or expansion in industry as a result of Inter-company investments, loans and transfers. It is clear that the Inter-company investments and Transfers made through D.C.P.M. and referred to in this Chapter cannot be regarded as normal and prudent business transactions. They were made in Disregard of Honest Commercial Practice to benefit the members of the D. J. Group and later R. Dalmia.



CHAPTER VIII

GOVERNMENT SECURITIES : UNAUTHORISED USE AND RETENTION OF SALE PROCEEDS

As part of its business, D.C.P.M. used to purchase and sell shares and securities for and on behalf of companies under the control of D. J. Group. Bharat Insurance, Bharat Bank and Dalmia Provident Fund were some of the parties for whom D.C.P.M. acted as agents.

On examination of the material briefly indicated below we came to the conclusion that D.C.P.M. fraudulently retained and used the sale proceeds of Government securities of Bharat Bank, Bharat Insurance and Dalmia Provident Fund as shown hereunder :

- (a) Rs. 6,93,321 of Bharat Insurance Co. Ltd. from March, 1948--September, 1948.
- (b) At least Rs. 63,59,671 of Bharat Bank Ltd. from 17-8-1948 to 17-1-1949.
- (c) Rs. 1,09,03,579-11-0 of Bharat Bank Ltd., from 31-12-1946 to at least 6-2-1947 at which date it would appear that the securities of the face value of Rs. 65 lacs were replenished.
- (d) About Rs. 2,96,852 of Dalmia Provident Fund, Dalmianagar, from March, 1948 to September, 1948.

It has also been further observed that in (a), (b) and (d), above, D.C.P.M. fraudulently misrepresented to the said Insurance Company, Bank and the Trustees of the Provident Fund that it had purchased Government securities on their behalf though, in fact, it had not done so. D.C.P.M. used the said moneys belonging to Bharat Insurance, Bharat Bank, and Dalmia Provident Fund, without furnishing securities, at rates of interest corresponding to the interest payable on the government securities fraudulently said to have been purchased and thus saved payment of the much higher rates of interest that D.C.P.M. would have had to pay in case it had obtained the said amounts from other sources.

Even otherwise, D.C.P.M. could not have obtained the amounts from the Insurance Company, Bank and Provident Fund Company outright. The Insurance Company could not in any event have advanced moneys except in accordance with the provisions of Section 27A of Insurance Act, 1938; the bank could not with propriety have advanced monies to D.C.P.M. without security; and the provident fund could not be utilised for granting loans.

In the absence of the books of accounts of D.C.P.M. which have not been made available to the Commission, the material on which the above findings were arrived at, were set out in detail in the Statement of Matters. The position, briefly, is as under :—

R. Dalmia and Shanti Prasad Jain were the directors of Bharat Insurance Co. Ltd., from 12-2-1942, and continued to be directors up to 6-3-1948 and 4-12-1948 respectively (Ex. 606). The other directors of

Bharat Insurance Co. Ltd., together with the available dates of their directorship are as under (Ex. 606) :—

1. J. Dalmia (at least) 1-8-1948 to 19-3-1939.
2. R. K. Jain (at least) 1-8-1948 to 19-3-1949.
3. I. D. Goswamy (at least) 1-8-1948 to 18-2-1950.

D.C.P.M. was under the effective control of the D. J. Group and later of R. Dalmia. J. Dalmia was the Managing Director and Shanti Prasad Jain was the Deputy Managing Director of D.C.P.M. up to 3-11-1947 and 1-11-1947 respectively. The directors of D.C.P.M. at the relevant time were V. D. Agarwal, M. K. Roy, H. D. Bishnoi, Shyam Lal Agarwal and M. P. Modi. Shriyans Prasad Jain was the Officer-in-charge of D.C.P.M. at Bombay from 11-10-1943 to 30-11-1949.

D.C.P.M. was buying and selling shares and securities on behalf of the Bharat Insurance Co. Ltd., as also of some other associate concerns of the D. J. Group. Whenever D.C.P.M. sold securities on behalf of Bharat Insurance Co. Ltd., the sale proceeds were credited to an account called "Government Securities Business Account" in the books of D.C.P.M. Likewise when purchases of Government Securities were made by D.C.P.M. the said purchase prices were debited to this account. The credit balance of the "Government Securities Business Account" as appearing in the monthly trial balance of D.C.P.M. are as follows :

[illegible]

In the absence of the books of account of D.C.P.M., full particulars are not available regarding the credit balance in the Government Securities Business Account from time to time and also about the adjustment on account of purchases of securities debited in this account.

But as regards the transactions that passed through the 'Government Securities Business Account', the available records indicate that it was quite a usual practice for D.C.P.M. to effect sales to sister companies 'in advance' and to 'Cover' such sales by purchasing long thereafter.

Re : (a) above

In or about March, 1948, D.C.P.M. had advised Bharat Insurance Co. Ltd., that 3 per cent Conversion Loan of the face value of Rs. 7 lacs, had been purchased; but delivery of these securities was not effected to the company till at least 1-9-1948 (Ex. 610/158).

The Bharat Insurance Co. Ltd., however, accounted for this purchase in its books as is indicated by the fact that it was to realise the half-yearly interest on the securities on 15-9-1948 (Ex. 610/158).

Bharat Insurance Co. Ltd., had instructed D.C.P.M. to purchase Government Securities in or about March, 1948 against the amount which stood credited in the 'Government Securities Business Account' and deliver them to the Insurance Co. (Ex. 610/158).

On 2nd September, 1948, Shriyans Prasad Jain informed Shital Prasad Jain that these securities were never purchased and that they would be purchased now and forwarded to Bharat Insurance Co. Ltd. (Ex. 610/157).

In fact, these securities were purchased by the Bharat Bank in the account of D.C.P.M. for Bharat Insurance Co. by 15-9-1948, i.e., long after the advice in March, 1948. As a result, the credit balance in the 'Government Securities Business Account' came down from Rs. 82,80,330 on 30-9-1948 to Rs. 74,47,068 on 31-10-1948 (Ex. 616/P. 92 and P. 74).

From the above it is clear that D.C.P.M. retained funds of Bharat Insurance Co. Ltd. to the extent of Rs. 6,93,321 (being the value of the securities, namely, 3 per cent Conversion Loan of the face value of Rs. 7 lacs) from March, 1948 to September, 1948. This was done with a view to use the said moneys belonging to Bharat Insurance Co. Ltd., without furnishing security, at rates of interest corresponding to the interest payable on the Government Securities said to have been purchased. This saved payment of much higher rates of interest that D.C.P.M. would have been obliged to pay if it had borrowed the said funds from elsewhere.

Re : (b) above

Similarly, the funds of Bharat Bank Ltd. to the extent of Rs. 63,59,671 were retained and used by D.C.P.M. from 17-8-1948 to 17-1-1949.

R. Dalmia was the Chairman of the Bharat Bank from its inception on 21-9-1942 up to August, 1947. Thereafter Shanti Prasad Jain was the Chairman of the Bharat Bank till at least 1950. J. Dalmia was also a director of this bank from September, 1942 to September, 1943. The other directors of the Bharat Bank during March, 1948 to September, 1949, were as below (Ex. 606/2-3 and Ex. 846) :

1. Shanti prasad Jain	..	..	..	..	..	Sept. 1942 to Feb. 1950
2. R. K. Jain	..	..	..	..	..	Sept. 1942 to Feb. 1950
3. V. H. Dalmia	..	..	..	..	..	1943 to 1950
4. Shriyans Pd. Jain	..	..	..	..	..	1943 to 1950
5. Maharaj Mandhata Singhji Bahadur	..	..	..	..	..	1942 to 3-11-1949
6. M. P. Modi	..	..	..	..	..	1943 to 15-7-1948
7. Raizada Brij Mohanlal	..	..	..	..	..	1946 to 23-12-1948
8. V. N. Jha	..	..	..	..	..	1943 to 1948
9. S. N. Bapna	..	..	..	..	..	1942 to 1950
10. Sir Liaqat Hyat Khan	..	..	..	..	..	1942 to 8-7-1948

On the same day, *i.e.*, 17-8-1948, D.C.P.M. Bombay advised the Bharat Bank, Bombay that 3 per cent 1953—55 loan of the face value of Rs. 72 lacs was sold to it for Rs. 73,98,000 (Ex. 637/142).

D.C.P.M. gave a receipt to Bharat Bank for Rs. 74,11,200, being the cost of 3 per cent 1953—55 loan for Rs. 72 lacs at Rs. 102-12-0 with interest till date from 15-7-1948. This receipt was dated 17-8-1948 and was signed by the Manager, D.C.P.M. (Ex. 637/144).

Note : It follows that the half yearly interest on these Securities sold to Bharat Bank was to fall due on 14th July, and 14th January.

The receipt mentioned that "The Securities will be delivered in exchange of this receipt duly discharged when ready". (Ex. 637/144). On the strength of the advice and receipt referred to above entries must have been made in the books of the Bharat Bank Ltd. showing the purchase of 3 per cent 1953—55 loan of the face value of Rs. 72 lacs, because the Bharat Bank Ltd. later on received the half-yearly interest on at least 62 lacs of this loan which fell due on 14-1-1949, as will be seen hereafter.

The simultaneous purchase and sale of securities worth Rs. 75 lacs and Rs. 72 lacs indicate that the sale of securities of the Bharat Bank was against the earlier purchase from it the sale proceeds of which were credited to the Government Securities Business Account in D.C.P.M. books (Ex. 637/141 and 610/120). This sale to the Bharat Bank was, therefore, debitable in this account.

But the monthly credit balances in the "Government Securities Business Account" do not indicate any such debit for such a large amount till at least December, 1948.

In fact, the securities of the value of Rs. 62 lacs do not appear to have been purchased by D.C.P.M. at any rate till January 1949 and hence D.C.P.M. could not have delivered these securities to the Bharat Bank (Ex. 637/143 and 625). The advice dated 17-8-1948 by D.C.P.M. to Bharat Bank Ltd. is, therefore, fraudulent.

The credit balance in the "Government Securities Business Account" was brought down to Rs. 74,47,068 (Ex. 616/74) as on 31-10-1948 because in or about September, October, 1948, D.C.P.M. purchased 3% Conversion Loan of the face value of Rs. 7 lacs on behalf of Bharat Insurance Co. Ltd. (Ex. 610).

The credit balance of "Government Securities Business Account" increased to Rs. 1,28,59,111 as on 31-12-48 (Ex. 616/48); details of this increase are not available.

Note : (a) The inference is that some more Government Securities of Bharat Bank Ltd., were sold by D.C.P.M.

(b) It also follows that the sale proceeds of the securities of the Bharat Bank Ltd., were with held and used by D.C.P.M. till about the end of January 1949 when D.C.P.M. bought Rs. 62 lacs of Government Securities.

Securities of the face value of Rs. 62 lacs were purchased by D.C.P.M. through the Punjab National Bank as below in January 1949. These were

3% 1953-55 loans and the transactions were made through brokers Messrs. Narain Das & Co. (Ex. 625/182).

			Rs.	Rs.	
(Ex. 625/1)	25-1-49	Face value	..	4,00,000	4,11,604-4-4 (Ex. 851/40)
(Ex. 625/1)	17-1-49	Face value	..	10,00,000	20,57,104-4-4 (Ex. 851/41)
(Ex. 626/2)	26-1-49	Face value	..	7,00,000	7,13,128-13-8 (Ex. 851/42)
(Ex. 625/1)	24-1-49	Face value	..	11,00,000	11,20,504,11-0 (Ex. 851/43)
	19-1-49	Face value	..	20,00,000	20,57,333- 8-8 (Ex. 851/44)
				<u>62,00,000</u>	<u>63,59,675-10-0</u>

The interest paid on the above purchases, though made during 17-1-49 to 26-1-49, included the interest due on the securities on 14-1-49 and accrued interest thereafter (Ex. 851/52).

The balance of the "Government Securities Business Account" as on 31-1-49 was brought down by Rs. 45,26,043, which represents the cost of the 1953-55 loan of the face value of Rs. 44 lacs out of Rs. 62 lacs purchased in January 1949 (Ex. 616/38).

The cost of the remaining Government Securities of the face value of Rs. 18 lacs viz., 18,33,632 was adjusted in February 1949. This reduced the balance of the "Government Securities Business Account" to Rs. 64,99,436 as on 28-2-49 (Ex. 851/49 & 50).

The aforesaid purchases of the 3% 1953-55 loan worth Rs. 62 lakhs were debited in the "Government Securities Business Account" and finally delivered to the Bharat Bank Ltd. (Ex. 610/85 a, 86 a, 89 a) since the half yearly interest due on these papers on 14-1-49 though realised by D.C.P.M. was later on refunded by it to the Bank.

The credit balance in "Government Securities Business Account" on 28-2-49 was transferred to Ashoka Marketing Co. Ltd. on the same date thus reducing the balance to Nil on that date (Ex. 610/84A).

The Nil balance as on 28-2-49 was manipulated for window dressing the balance sheet of D.C.P.M. as on 28-2-49 (Ex. 610/84A).

On or about 3rd March 1949, Shital Prasad Jain advised Shriyans Prasad Jain to transfer the cost of 3% 1953-55 loan of the face value of Rs. 62 lacs as on 28-2-49 to Ashoka Marketing Co. Ltd., Bombay purporting to show that these securities were purchased as on the said date through Ashoka Marketing Co. Ltd., Bombay (Ex. 610/84A).

Between 3rd and 5th March 1949 Ashoka Marketing Co. Ltd., advised the Bharat Bank to take delivery of Government Securities of the face value of Rs. 62 lacs from

						Rs. lacs	
Harkishandass Lukhmidass	..	..	..	..	..	20	Ex. 610/85A, 86&
Narayandass & Sons	..	..	..	..	..	42	89A.
						<u>62</u>	
					TOTAL	..	

Thus these securities were also purchased in the account of and delivered to the Bharat Bank by D.C.P.M. through Ashoka Marketing Co. Ltd.

Interest due on 14-1-49 on Rs. 62 lacs 3% loan purchased by D.C.P.M. in January, 1949 was realised by it through the Punjab National Bank and credited in "Government Securities Business Account" (Ex. 851/67, 68, 69).

This interest was payable to the Bharat Bank. But as D.C.P.M. had no funds in its account with the Bharat Bank, the funds required for the payment were arranged by D.C.P.M. through Ashoka Marketing Co. Ltd. (Ex. 610/93, 94, 98).

On 9th March, 1949, Ashoka Marketing Co. Ltd., advised the Manager, Bharat Bank Ltd., Fort, Bombay (Ex. 610/80A) to debit its account with the amount of interest on Government securities of the face value of Rs. 62 lacs. Accordingly the bank, on 9th March 1949, confirmed that a sum of Rs. 93,405 as detailed below had been debited in the account of Ashoka Marketing Co. Ltd.

	Rs	
(i) For 6 months from 15-7-48 to 14-1-49	93,000	} Ex. 851/70
(ii) Interest on the amount of Rs. 93,000 from 15-1-49 to 9-3-49.	405	
TOTAL ..	93,405	

Ashoka Marketing Co. Ltd., in its books debited the above interest payment in the account of D.C.P.M. by crediting the Bharat Bank. Correspondingly D.C.P.M. debited this payment in its "Government Securities Business Account" by crediting Ashoka Marketing Co. Ltd. (Ex. 610/98 and 86).

Thus both the purchases of the loans of the face value of Rs. 62 lakhs each in January 1949 (Ex. 851/40-44) and again in March 1949 (Ex. 610/84A) were made by D.C.P.M. in the accounts of the Bharat Bank (Ex. 610/94) so as to wipe out the entire credit balance in the "Government Securities Business Account" as on 28-2-49. The credit balance in this account at least to the extent of the total purchase price of the said two loans represented the proceeds of Government Securities of the Bharat Bank.

It is clear from the above that even if the purchase of the loan of Rs. 62 lacs for Rs. 63,59,671 in January 1949 (Ex. 625) was made by D.C.P.M. to cover the advance sale of 3% 1953-55 Conversion Loan for Bharat Bank as advised to it on 17-8-48, D.C.P.M. actually retained and used the sale proceeds of the Government Securities of the Bharat Bank to the extent of the aforesaid amount of Rs. 63,59,671, at any rate for the period from 17-8-48 to 17-1-49 without any authority from the Bharat Bank for retaining such amount for such a period.

Re (c) above

D.C.P.M. retained and used the sale proceeds of Government Securities to the extent of Rs. 1,09,03,579-11-0 of Bharat Bank Ltd., from 31-12-46 to at east 6-2-47 on which date the securities of the face value of Rs. 65 lacs were replenished as under (Ex. 493/502 & 875).

The D. J. Group through D.C.P.M., sometime in October 1946, acquired control of the two textile mills, S.S.B. Mills Ltd. and M.D.M. Co. Ltd., from the Provident Investment Co. Ltd., for Rs. 3,68,50,042. In order to meet this heavy liability D.C.P.M. took an overdraft from the Bharat Bank, Bombay. As on 18-10-46 the amount of the overdraft was Rs. 1,61,63,293

(Ex. 493). Immediately after the control of S.S.B. Mills and M.D.M. Co. was acquired, S.S.B. Mills and M.D.M. Co. borrowed Rs. 52 lacs and Rs. 28 lacs respectively from the Bharat Bank Ltd., Bombay on or about 22-10-46 against the security of finished goods and stores of the mills (Ex. 875/81).

On 22-10-46 this amount of Rs. 80 lacs was advanced by both the mills to D.C.P.M. and deposited in cash in the account of D.C.P.M. with the Bharat Bank Ltd., Bombay (Ex. 875/81 and Ex. 493/41).

On 31-12-46 D.C.P.M. sold Government securities of Bharat Bank Ltd., of the face value of Rs. 105 lacs, for Rs. 1,09,03,579-11-0 (Ex. 875/81). The sale proceeds were deposited in the account of D.C.P.M. with the Bharat Bank, Bombay as follows (Ex. 493/608, 875/62).

Nature of Loan	Face value (in lacs) Rs.						Amount		
							Rs.	A.	P.
3% 1963-65	30	31,08,109	6	0					
3% 1966-68	42	43,65,790	10	0					
3% 1970-75	33	34,29,679	11	0					
TOTAL ..	104	1,09,03,579	11	0					

This transaction was made under the instructions of R. Dalmia who was then the Chairman of Bharat Bank Ltd., (Ex. 875/61 & 606). At that time Shanti Prasad Jain was one of the Directors of the Bharat Bank Ltd. (Ex. 606). Out of the sale proceeds of the above government securities D.C.P.M. repaid the loan of Rs. 80 lacs to S.S.B. & M.D.M. Co. Ltd.

S.S.B. & M.D.M. Co. Ltd. in their turn paid this money back to the Bharat Bank, Ltd., Bombay and cleared their overdraft. The overall effect of this transaction was that the loan of Rs. 80 lacs taken by S.S.B. and M.D.M. Co. from the Bharat Bank Ltd., was repaid out of the sale proceeds of the Government securities belonging to the Bharat Bank.

Although the sale proceeds were credited to the account of D.C.P.M. with the Bharat Bank Ltd., Bombay on 31st December, 1946, this amount was treated as a loan to D.C.P.M. with effect from 10th January 1947. (Ex. 875/61). In the circumstances, D.C.P.M. had *unauthorised* use of the sale proceeds amounting Rs. 109 lacs from 31-12-46 to 10-1-47. Thereafter, up to at least 6-2-47, it was treated as a loan. But for the common control by the D. J. Group over the Bharat Bank Ltd. and D.C.P.M. this would not have been possible. Securities to the extent of Rs. 65 lacs were thereafter replenished by D.C.P.M. on or about 6-2-47 (Ex. 875/57).

Re (d) above..

The employees of the D. J. Group concerns as subscribers to the provident fund were the beneficiaries of the Dalmia Provident Fund, Dalmianagar. Shanti Prasad Jain was a Trustee of this fund in September 1948 (Ex. 610/154). The other trustee was H. D. Bishnoi (Ex. 878/92).

The following were the officials of the Fund :

- | | | | | | | | |
|-------------------|----|----|----|----|----|------------|--------------|
| (i) M.L. Burman | .. | .. | .. | .. | .. | Secretary | (Ex. 877/62) |
| (ii) M. Singhania | .. | .. | .. | .. | .. | Accountant | (Ex. 876/8) |

The Government securities of the face value of Rs. 3 lacs were purchased by D.C.P.M. in the account of Dalmia Provident Fund along with securities worth 7 lacs purchased for Bharat Insurance Co. Ltd., in September 1948 (Ex. 610/157-158).

The purchase of the aforesaid securities worth Rs. 2 lacs in the account of the Provident Fund was advised in advance in or about March 1948. The Securities were however actually purchased later on and delivered to the Trustees in circumstances similar to those in the case of sale of securities by D.C.P.M. worth Rs. 7 lacs, to Bharat Insurance Company. The relevant entries for this purchase of Government Securities were also raised in the "Government Securities Business Account" in the same manner as in the case of the entries for the other 'loan' of Rs. 7 lacs for Bharat Insurance, with which we have just dealt.

Shanti Prasad Jain dealt at length in his written statement with the general position in respect of business in Government Securities and asserted that D.C.P.M. acted according to the general principles of such trade. He has also stated that D.C.P.M.'s business in respect of Government Securities was not confined to Bharat Insurance Co. Ltd., Bharat Bank Ltd., and Dalmia Provident Fund alone but it was also transacted on its own behalf and on behalf of other companies. As Shanti Prasad Jain ceased to be a director of D.C.P.M. from November, 1947, he contended that he was not directly connected with any of the transactions. He mentioned that even during his tenure of office as a director of D.C.P.M., it was not the practice to bring to the notice of the directors all the transactions which were entered into by D.C.P.M. in the normal course of its business. He denied that up to 31st May 1948, D.C.P.M. ever fraudulently retained and used the sale proceeds of the Government Securities.

J. Dalmia replied along the same lines.

Shriyans Prasad Jain, in his written statement, stated that the dealings and transactions in Government Securities between D.C.P.M. and Bharat Bank Ltd., and Bharat Insurance Co. Ltd., and Dalmia Provident Fund were made between the parties concerned direct and he had no concern with them. He only attended when any reference was made to him in the matter. He further stated that he ceased to be a director of Bharat Insurance Co. Ltd., from 31st December 1947 and that so far as the investment in the Government securities and the sale thereof by Bharat Bank Ltd., and Bharat Insurance Co. Ltd., were concerned, the same were done by the officers of the company in the normal course and that he had no connection whatsoever with the Dalmia Provident Fund.

He also stated that D.C.P.M. dealt in Government Securities on its own account as also on behalf of its customers and its transactions with its customers were as principal to principal. He stated that a dealer in Government Securities, when he is asked to make a purchase by any customer, does not necessarily make a purchase in the market but may himself sell to the customer either against his own stock or may cover the same later on and take the risk of fluctuation in the market and the customer makes payment to the dealer either against delivery of Government Securities or in advance and in the latter case, he becomes entitled to interest from the date of payment and there is no loss to the customer. He said that it depends upon the relation between the dealer and the customer. He

said that D.C.P.M. dealt in Government Securities not only on account of Bharat Insurance Co. Ltd., or Bharat Bank Ltd., but also on account of other parties and also on its own account.

He further stated that the account called 'Government Securities Business Account' was not the account of the sale and purchase of the Government Securities on behalf of Bharat Bank Ltd., and Bharat Insurance Co. Ltd., and 'other associate concerns' but it was the account of D.C.P.M. and all its dealings in Government Securities either on its own account or on account of its customers. In the absence of books of account of D.C.P.M. he stated that he is unable to admit or deny the correctness of the facts mentioned in para 7 and 8 and therefore does not admit the same.

Counsel for Shanti Prasad Jain, contended that Shanti Prasad Jain was not concerned with the deal in Government Securities of Bharat Insurance from March 1948 to September 1948 and of the Bharat Bank Ltd., from 17-8-48 to 17-1-49.

As regards Dalmia Provident Fund, counsel contended that though Shanti Prasad Jain was a trustee of the Provident Fund he did not personally attend to the purchase and sale of securities.

As regards the security business of the Bharat Bank from 31-12-46 to 6-2-47, he contended that though the transaction took place outside his personal knowledge, it would be only a case of unauthorised use of funds for a few days instead of fraudulent retention of the funds as alleged in the Statement of Matters. According to the Counsel for Shanti Prasad Jain, D.C.P.M. was acting as a broker for Government Securities not only for these banks but also for other companies and sometimes clients made payments in advance against "trust" receipts and interest was paid from the date of the said receipts.

All we need is say it is very rare for banks and Insurance companies to advance moneys in the first instance for purchase of Government Securities and then allow the broker to buy them after sometime thereby allowing the broker the use of the funds till such time as the actual purchase is made. Trust receipts are generally issued by brokers only for a very short period and that too in exceptional circumstances.

It may also be pointed out here that the material on which the conclusions were reached in respect of the *four* instances dealt with above and were set out in the Statement of Matters in detail, were not refuted or disputed by any of the persons concerned or by their counsel. Counsel for Shanti Prasad Jain, however, in the course of arguments, conceded that in respect of the third instance, there could have been an unauthorised use of funds of Bharat Bank Ltd., for a short period but he said that no fraud was committed by any one.

As already stated, R. Dalmia was the Chairman of the Bharat Bank up to August 1947. Thereafter Shanti Prasad Jain was the Chairman of the Bharat Bank till at least 1950. J. Dalmia was also a Director of the Bharat Bank from September, 1942 to September 1943.

R. Dalmia and Shanti Prasad Jain were Directors of Bharat Insurance from 1942 to 1948. J. Dalmia was a Director from 1-8-48 to 19-3-1949.

Shanti Prasad Jain was a Trustee of Dalmia Provident Fund in September 1948. The other trustee was H. D. Bishnoi.

Shanti Prasad Jain and J. Dalmia ceased to be Directors of D.C.P.M. from November 1947.

It will be seen from the particulars stated above that it was possible for D.C.P.M. *unauthorisedly* to retain and make use of the funds of the Bharat Bank, Bharat Insurance and Dalmia Provident Fund because of the control that the members of the D. J. Group exercised over the said Bank, Insurance Co. and Provident Fund. Even if Shanti Prasad Jain and J. Dalmia were not Directors of D.C.P.M. at the time of transactions in (a), (b) and (d) above, the use of funds was possible only because of the control of the Group, through one or more of them, over all other companies. D.C.P.M. was able to retain and use the funds which were intended for purchase of Government securities, for its own purposes, because of the influence and control exercised by Shanti Prasad Jain, J. Dalmia and R. Dalmia, over the Bank, Insurance Company and Dalmia Provident Fund, either directly or indirectly. As such all three of them must be held responsible for the unauthorised retention and use of Funds of the Insurance company, Bank and the Provident Fund by D.C.P.M.

CHAPTER IX

NAHUR LAND

Another instance of the pattern of misuse of funds of a Public limited company by R. Dalmia for his own benefit or for the benefit of his concern. is to be seen in the transfer of certain undeveloped land at Nahur by D.C.P.M. to Bharat Insurance Co. Ltd. As stated earlier D.C.P.M. was a company under the control of R. Dalmia in which, during the material period, R. Dalmia held beneficially practically all the shares. Bharat Insurance Co. Ltd. was, on the other hand, a public limited company in which the investing public and policy holders were interested. But during the shareholders and policy holders of Bharat Insurance Co. Ltd.

D.C.P.M. was indebted to Bharat Insurance Co. Ltd., to the extent of Rs. 29 lacs in or about December 1950. Towards repayment of this amount more than 5 lacs square yards of undeveloped land at Nahur, purchased by D.C.P.M. a few years back at Rs. 2-4-0 per sq. yd. was transferred to Bharat Insurance Co Ltd., at Rs. 8 per sq. yd. Thus on this deal, D.C.P.M. made a *profit of Rs. 21,19,586-10-0* at the expense of the shareholders and policy holders of Bharat Insurance Co. Ltd.

The object of this fraudulent and collusive transaction was :

- (i) to confer a benefit on D.C.P.M. and ultimately on R. Dalmia; and
- (ii) to wipe off the indebtedness of D.C.P.M. to the Bharat Insurance Co. Ltd., which at the time of the sale of the Nahur Land stood at Rs. 29 lacs.

The Nahur Land which had cost D.C.P.M. Rs. 11,40,077-6-0 was sold for Rs. 40,19,664-0-0 thus giving a profit to D.C.P.M. almost equal to its indebtedness to Bharat Insurance Co. Ltd., of Rs. 29 lacs.

How this was done is briefly indicated below—

D.C.P.M. purchased the land in Nahur village, Thana District, near Bombay. The total cost of this land in the hands of D.C.P.M. amounted to Rs. 11,40,077-6-0 (Ex. 608/51) as under :

1946-47

		Rs.
February 25	To cost of 32,912 sq. yds. at Rs. 2-4-0 Shankar Datta Jagdishchandra, Nahur Dist. Thana.	74,052 0 0
February 28	To cost of 64,586 sq. yds. at Rs. 2 Bhuta Narsingh Mansinghi, Nahur, Dist. Thana.	1,43,581 10 0
February 28	To cost of 7,925½ sq. yds. at Rs. 1-12-9 Bhuta Narsingh Mansinghi, Nahur, District Thana.	
February 28	To cost of 11,945 sq. yds. at Rs. 2-2-0 B. F. Mehta, Nahur, Dist. Thana.	24,426 14 0
February 28	To cost of 25,984 sq. yds. at Rs. 1-10-0 K. R. Patel and others.	42,225 3 6
February 28	To amount transferred from land purchase account (expenses).	2,94,385 12 2

		Rs.		
1947-48				
May 23	To registration fee on land purchased through K.R. Patel paid.	39,14	6	
June 5	To cost of 25,440 $\frac{1}{2}$ sq. yds. at Rs. 2-2-0 per sq. yd. lying to the debit of Gorla Patel now transferred.	54,060	8	6
September 19	To amount paid to Motichand Devidas and Jetha Shankar against purchase of 259,160 sq. yds. land now transferred.	5,78,320	0	0
February 28	To cost of 189,712 sq. yds. land from saroff	80,101	0	0
February 28	To cost of 257 $\frac{1}{2}$ sq. yds. from R. H. Marwari	89,994	0	0
February 19	To transfer of expenses from Revenue Ledger Account	8,23,947	3	10
1948-49				
October 23	To payments of mr. G. R. Agarwal's bill for brokerage ..	21,744	6	0
TOTAL ..		11,40,077	6	0

The value of the land as shown in the balance sheets of D.C.P.M. was as follows :

In the Balance Sheet of D.C.P.M.

		Rs.			Rs.		
(a) As on 28-2-47 (Ex. 406/7)							
Land					2,94,385	12	2
(b) As on 29-2-48 (Ex. 461/5)							
Land at cost as per last balance sheet ..	2,94,385	12	2				
Building at cost as per last balance sheet ..	7,64,799	9	0				
	10,59,175	5	2				
Additions during the year	11,87,447	3	10				
	22,46,622	9	0				
Less : Depreciation written off as per last balance sheet.	82,210	13	4				
					21,64,411	11	8
(c) As on 28-2-49 (Ex. 497/5)							
Land and Buildings (at cost) as per last balance sheet.							
Land	11,18,333	0	0				
Building	11,28,289	9	0				
Additions during the year	22,46,622	9	0				
	Rs.						
Land at Bombay	21,744	6	0				
Building	2,06,836	13	6				
	2,28,581	3	6		24,75,203	12	6
(d) As on 28-2-50 (Ex. 237/5)							
Land and Building (at cost) as per last balance sheet.							
Land	11,40,077	6	0				
Buildings	9,09,409	1	3				
					20,49,486	7	3
(e) As on 28-2-51 (Ex. 238/5)							
Land & Building (at cost) as per last balance sheet.							
Land	11,40,077	6	0				
Buildings	6,39,271	14	0				
	17,79,349	4	0				
Additions during the year	87,033	5	0				
	18,56,382	9	0				
Less : Sales and adjustments during the year	Rs.						
Building sold	7,23,004	11	0				
Land sold	11,40,077	6	0				
Cost of unsold stamp paper for building.	3,300	80					
	18,66,382	9	0				Nil

In or about December 1950, D.C.P.M. agreed to sell to Bharat Insurance Co. Ltd., 455,366.75 sq. yds. out of the total area of 502,458 sq. yds. at the rate of Rs. 8 per sq. yd., for Rs. 36,42,934 (Ex. 847). The purchase of the land was approved on 16th December 1950 at meeting of Bharat Insurance Company Limited, at which were present R. Dalmia, K. L. Agarwal and R. L. Chordia, directors of the company (Ex. 882). R. L. Chordia is a brother-in-law of R. Dalmia. He was also the Managing Director of Bharat Insurance Co. Ltd., K. L. Agarwal was a director on behalf of the policy holders and was connected with the concerns of R. Dalmia.

In or about December 1950, a sum of Rs. 29 lacs was due by D.C.P.M. to Bharat Insurance Co. Ltd. (Ex. 847). This amount of Rs. 29 lacs was adjusted against the price of Rs. 36,42,934 payable by Bharat Insurance Co. Ltd., to D.C.P.M. (Ex. 847). On 30th December 1950 an agreement to sell 455,366.75 sq. yds. of Nahur Land at Rs. 8 per sq. yd. by D.C.P.M. to Bharat Insurance Co. Ltd. was executed (Ex. 882 and Ex. 847). Under this agreement, Bharat Insurance Co. Ltd., was given the option of purchasing the balance of the lands, measuring 47,091.25 sq. yds. at the same rate, provided the option was exercised on or before 7th February, 1951 (Ex. 847 and Ex. 882).

Clause 4 of the Agreement stated that the land in Nahur Village was one single continuous piece suitable for a compact colony and that it was to be developed by D.C.P.M. at its own cost into good condition for a residential colony and that it was to be suitably laid out in plots for the purpose. Bharat Insurance Co. was, however, to have the option itself to get the land directly developed and laid out and to recover the cost incurred for this from D.C.P.M. (Ex. 847).

Under Clause 7 of the Agreement D.C.P.M. undertook, if so desired by Bharat Insurance Co. Ltd., to arrange for the lease of the land agreed to be purchased at a rent yielding not less than 4 per cent of the amount invested. (Ex. 847).

In the recital of the agreement reference was made to the property at Haines Road, Mahalaxmi, which was in no way connected at that time with the sale of the Nahur Land. Actually the Haines Road property belonged to S.S.B. Mills Ltd. at that time (Ex. 847). Subsequently, the property at Haines Road, Mahalaxmi was also transferred to Bharat Insurance Co. Ltd. This shows that at the time of the sale of the Nahur Land, the sale of Haines Road property was also under contemplation. (Ex. 847).

On 31st January, 1951 Bharat Insurance Co. Ltd., was made to exercise the option of buying the remaining land, viz., 47,091.25 sq. yds. at the rate of Rs. 8 per sq. yd. for a sum of Rs. 3,76,730 (Ex. 847). This was decided by the following directors of Bharat Insurance Co. Ltd. at their meeting held on 31st January, 1951 (Ex. 847).

1. K. L. Agarwal.
2. R. L. Chordia.
3. M. K. Roy.

All the above persons were closely connected with R. Dalmia.

The total value of the Nahur Land purchased by Bharat Insurance Co. Ltd., (502,458 sq. yds.) came to Rs. 40,19,664 (Ex. 847). A sum of Rs. 11,19,664 (Rs. 40,19,664 minus Rs. 29,00,000) was paid by Bharat Insurance Co. Ltd., in or about March, 1951 (Ex. 847). D.C.P.M. thus made a profit of Rs. 28,79,566-10-0 on the sale of the Nahur Land to Bharat Insurance Co. Ltd., (Rs. 40,19,664 minus Rs. 11,40,077-6-0) (Ex. 847).

After the execution of the 'Conveyance Deed' on 19th March (1951) Bharat Insurance Co. Ltd. found that land measuring about 30,000 sq. yds. could not be used for non-agricultural purposes and that the time limit allowed for the purpose of putting up a colony was only up to 31st January, 1952 (Ex. 847). Also, on measuring the land a deficiency of 7,305½ sq. yds. was found (Ex. 847). Bharat Insurance Co. Ltd. therefore claimed compensation in respect of the above deficiencies (Ex. 847). At the same time Bharat Insurance Co. Ltd. also got the land at Nahur valued by a firm of valuers, Messrs. K. R. Irani & Co. (Ex. 847). These valuers gave their valuation report in or about September 1951 to Bharat Insurance Co. Ltd. According to the report the value of the Nahur Land measuring 495,159.05 sq. yds. came to only Rs. 24,52,000 (Ex. 847). Bharat Insurance Co. Ltd. had paid for this very land Rs. 40,19,644. Thus Bharat Insurance Co. Ltd. had paid an excess amount of Rs. 15,67,664 (Ex. 847).

Towards the claim of Bharat Insurance Co. Ltd., D.C.P.M. transferred the land in Haines Road, Mahalaxmi, Bombay, valued by Messrs. K. R. Irani & Co. at Rs. 16,60,000 belonging to S.S.B. Mills Ltd., to Bharat Insurance Co. Ltd. (Ex. 847). In addition to the Haines Road lanes, D.C.P.M. also offered open land and 6 houses in Ghaziabad to Bharat Insurance Co. Ltd., towards the above compensation (Ex. 847). At the Directors meeting held on 29th September 1951, the land at Haines Road, Bombay, and the open land and 6 houses at Ghaziabad were accepted by Bharat Insurance Co. Ltd., towards its claim for the excess payment of the Nahur Land (Ex. 847). This meeting was attended by R. Dalmia, K. L. Agarwal and R. L. Chordia (Ex. 847).

As a result of the transfer of the Ghaziabad property, it was possible to effect the registration outside Bombay and it was so registered.

One of the conditions of the 'Conveyance' was that if the rights conveyed are, in whole or in part, lost to the purchaser on account of any defect found in the right, title and interest of D.C.P.M., D.C.P.M. will fully compensate Bharat Insurance Co. Ltd. for all consequential losses, damages and costs. But this condition became ineffective because D.C.P.M. went into liquidation in February, 1953 and was dissolved in April 1953 (Ex. 847, Ex. 225/1 and Ex. 233/1 and 2).

In the agreement dated 30th December, 1950, there was a condition that D.C.P.M. would arrange for the lease of the properties at a rental yielding not less than 4% of the amount invested for a period of 7 years, if so desired by Bharat Insurance Co. Ltd. (Ex. 882 and Ex. 847).

The investment of Bharat Insurance Co. Ltd. in the Nahur land was Rs. 40,19,664 (Ex. 847). D.C.P.M. arranged the lease of the land with Bennett Coleman & Co. Ltd. at Rs. 24,000 per month up to 31st December, 1951 and at Rs. 16,000 per month afterwards (Ex. 847).

Bennett Coleman & Co. Ltd. was also under the effective control of R. Dalmia at that time (Ex. 600).

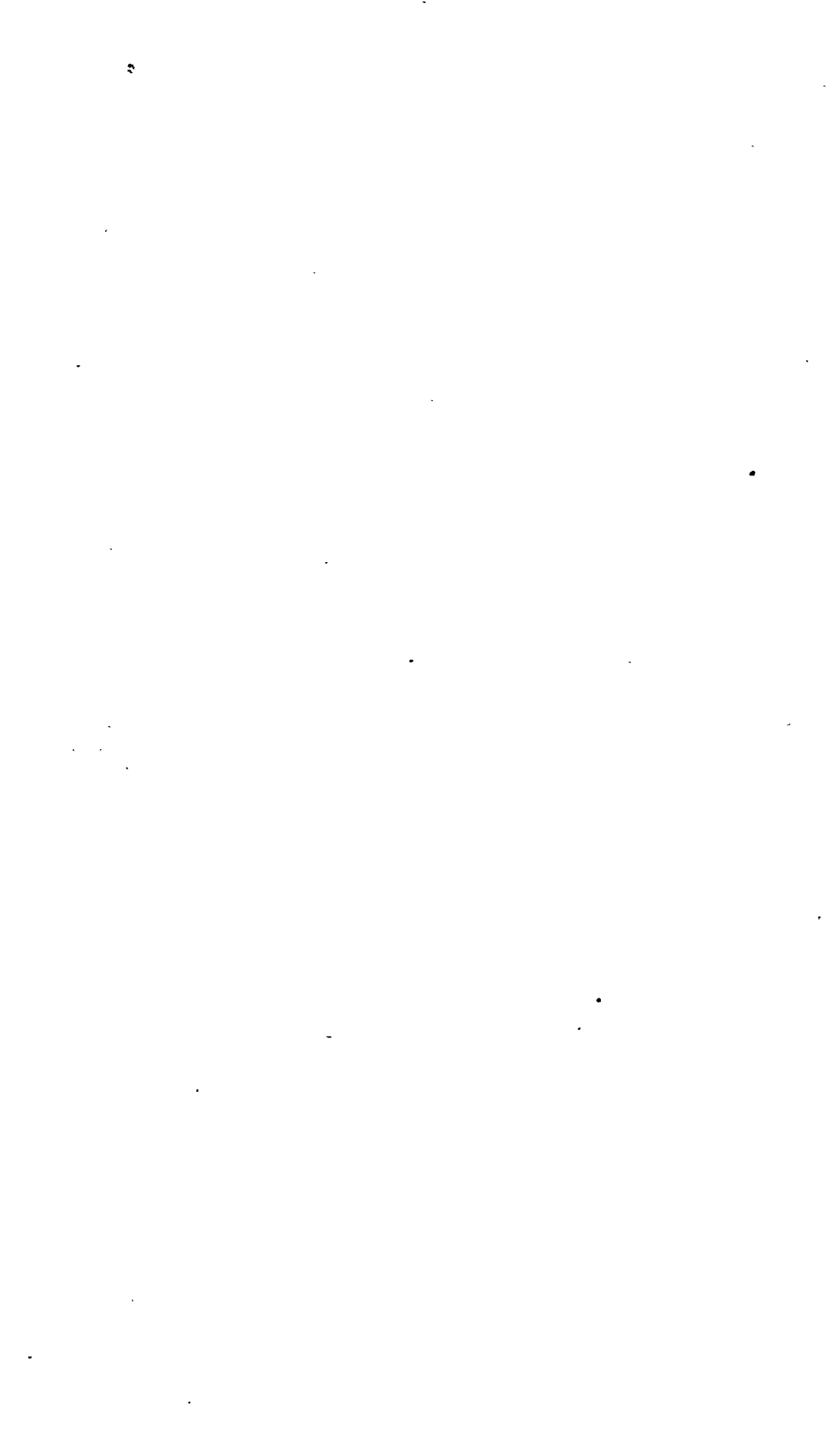
In the profit and loss account of D.C.P.M. for the year ended 28th February, 1951, an item of Rs. 21,20,581-15-6 appears on the credit side as "appreciation on sale of land and building" (Ex. 497 & 238/4). This amount consisted of two items, viz., Rs. 21,19,586-10-0 as appreciation on the sale of land and Rs. 995-8-0 as appreciation on the sale of buildings.

The amount of Rs. 21,19,586-10-0 was arrived at as follows (Ex. 497) :

	Rs.
Received from Bharat Insurance Co. Ltd. for the sale of Nahur land	40,19,664 0 0
Less : Cost of the land as per balance sheet	11,40,077 6 0
	<hr/>
(The profit on sale of Nahur Land utilised to wipe out the indebtedness of D.C.M.P. to Bharat Insurance Co. Ltd., amounting Rs. 29 lacs).	28,79,586 10 0
Less : Value at which the Haines Road property was transferred to Bharat Insurance Co. Ltd., towards its claim against the sale of Nahur Land	16,60,000
Less: Profit on sale of Haines Road property on 2-10-51	9,00,000
	<hr/>
Net profit on the sale of Nahur Land	7,60,000 0 0
	<hr/>
Net profit on the sale of Nahur Land	21,19,856 10 0

As stated earlier, the investing public and Policy holders held a large number of shares in Bharat Insurance Co. Ltd. whereas in D.C.P.M., the D. J. Group and later R. Dalmia held nearly all the shares.

The immediate parties to the collusion and fraud were the following directors of D.C.P.M., namely, V. D. Agarwala, M. K. Roy, H. D. Bishnoi, P. S. Patke, S. R. Srivastava; also the following directors of Bharat Insurance Co. Ltd., namely, R. Dalmia, K. L. Agarwal, R. L. Chordia and M. K. Roy. But the person who was really responsible for this fraud was R. Dalmia as he had control over both Bharat Insurance Co. Ltd. and D.C.P.M.



CHAPTER X

PAYMENT OF RS. 7 LACS COMPENSATION TO SHRIYANS PRASAD JAIN

We now come to another fraud in which Rs. 7 lacs was paid as compensation to Shriyans Prasad Jain, the elder brother of Shanti Prasad Jain, for the "premature termination" of his services to D.C.P.M.

The objects were,

- (a) to benefit Shriyans Prasad Jain; and
- (b) to act as a colourable device to evade income-tax on the Rs. 7 lacs in the hands of Shriyans Prasad Jain.

The payment was fraudulent because,

- (1) the appointment of Shriyans Prasad Jain was not approved by any resolution of the Board of Directors of D.C.P.M. although he was said to have been appointed for a definite term of 25 years commencing from the 1st of April, 1943 at a salary of Rs. 4,000 a month free of income-tax, and was to be paid compensation at the rate of Rs. 4,000 a month for every month of the unexpired term of his engagement in the event of a breach;
- (2) the letter of appointment that purports to be dated 11th October 1943 and which purports to contain the terms and conditions of the appointment was ante-dated;
- (3) the fact that the impugned letter bears no serial number;
- (4) no formal agreement was executed by D.C.P.M. in favour of Shriyans Prasad Jain;
- (5) the fact that the letter of appointment dated 11-10-1943 and that of the letter of termination dated 7-2-1950 although seen by the Inspector and initialled by him for identification, were destroyed and its duplicates which were sent to Shriyans Prasad have not been produced;
- (6) the fact that these two letters were destroyed in the face of definite instructions not to destroy them.

The payment was also in disregard of honest commercial practice.

We will now set out the facts.

A sum of Rs. 7 lacs was paid by D.C.P.M. to Shriyans Prasad Jain by way of compensation for the breach caused by termination of his services with effect from 30th November, 1949. D.C.P.M. did not declare dividend on its ordinary shares from 1941 onwards and on Preference shares from 1943 onwards although it thought fit to pay a compensation of Rs. 7 lacs to Shriyans Prasad Jain. We have already seen that this very company, namely, D.C.P.M., received Rs. 46,90,000 as compensation for the termination of the selling agency agreements with the two mill companies, S. S. B. Mills Ltd., and M. D. M. Co. Ltd., resulting from the breach caused by the

sale of the undertaking of the mill companies in or about July 1950. Also another two companies, B.U.A. Ltd., and V. V. Ltd., in which R. Dalmia as the sole beneficiary, received compensation of Rs. 1,19,90,000 for the termination of the managing agency agreements from the same breach caused by the sale of the undertaking of the mill companies.

In the case of D.D.C. Ltd., another company whose affairs have been investigated into by the Commission, there was a similar termination of managing agency agreement and compensation of Rs. 6 lacs was paid to Dalmia Jain (Jind State) Ltd., Managing Agents, towards the end of 1952.

We will now examine the facts of this particular case, namely, payment of Rs. 7 lacs as compensation to Shriyans Prasad Jain for termination of his services.

By an Order No. F. 2(14)/52-Dev/E. I & L., dated 20th August 1952, M/s. D. P. Khosla & Co., Chartered Accountants, Delhi, were appointed Inspectors under section 138 of the Indian Companies Act, 1913 to investigate into the affairs of the company covering the period of 3 years ending 28-2-1949, 28-2-1950 and 28-2-1951. One of the points the Inspectors were specifically required to investigate was, "whether the compensation of Rs. 7 lacs paid to Shri S. P. Jain is in order and in the interest of the shareholders or the Directors".

In his Report (Ex. 240) paragraph 8, Shri Khosla stated that—

"In support of the appointment of Sahu S. P. Jain, the company produced a copy of the letter of appointment dated 11-10-1943 issued to him under signature of Mr. V. H. Dalmia, a director of the company. The copy of the letter is attached as Appendix I.—The letter required Sahu S. P. Jain to sign on the duplicate of the said letter. The said duplicate as signed by Sahu S. P. Jain has been produced before us and examined."

The letter dated 11-10-1943 of which a copy was given to the Inspector, is as follows :—

"DALMIA CEMENT AND PAPER MARKETING CO. LTD.,
DALMIANAGAR.

October 11, 1943.

Syt. Shriyans Prasad Jain.

Dear Sir,

Confirming the negotiations that have been carried on between this company and yourself, this is to confirm that you will please look after the Bombay Office Organisation of this company for which you will be paid a fixed amount of Rs. 4,000 (Rupees Four thousand only) per month. Income-tax and Super-tax due and payable on this amount of remuneration will be paid by the company according to the rate prescribed in the yearly Financial Act. Conveyance and Entertainment allowances will be allowed as may be agreed upon from time to time.

The terms of employment will be for a definite period of 25 years commencing from the 1st April 1943, and the company reserves to itself the right to depute you to look after the interests of any other concern and arrange for your remuneration being paid either by that other concern or itself meet the same. You have requested that it should be made clear that should your services be terminated before the expiry of 25 years, then a definite compensation for loss of office and breach of agreement should be provided. In confirming that on the occurrence of any such contingency of our severing connections with each other or terminating the office of employment due to any reasons whatsoever, it is hereby stipulated that you will be entitled to a compensation and the same shall be calculated as equivalent to Rs. 40,000 for each unexpired year of the duration of your employment.

This is being addressed to you in duplicate. Kindly acknowledge on the duplicate and send same for our file keeping the original for your own record.

Yours faithfully,

For Dalmia Cement & Paper Marketing Co. Ltd.

(Sd.) Shriyans Prasad

(Sd.) V. H. Dalmia
Director."

The underlining is by us.

The Inspector went on to say—

"We looked for the sanction or confirmation of the appointment of Sahu S. P. Jain in the Minutes of the Board's meetings convened and held during the years 1943 and following years. It appears that the Directors as a Board took no cognisance of the said appointment. The omission on the part of the Board to consider, at any stage, the terms of appointment of Sahu S. P. Jain is most significant.....

We noticed that in the subsequent appointment of the Managing Director made by the Board on 10-7-1947 and the appointment of the Secretary on 20-9-1948, the matter was brought for consideration before the Board, which resolved to proceed with the appointment of the said two officers. It is inconceivable that whereas the terms relating to the appointment of an officer of the rank of a Secretary came up for consideration before the Board, the Board will ignore the appointment of an officer to whom the company stands committed to pay heavy compensation in the event of loss of office or breach of agreement.

.....Had the term for the payment of compensation been in actual existence on the date of appointment, the settlement would have been evidenced by a properly executed Deed on a Stamp Paper with the company's seal affixed to it.

Instead a copy of a letter purporting to be the letter of appointment is placed on record. *The letter bears no reference number.* It is signed by one of the directors and by Sahu Shriyans Prasad who of course has very willingly acquiesced to the terms contained in the letter. After nearly six years the signatures

of Sahu Shriyans Prasad are obtained on another letter (Appendix II) issued under date 7-2-1950, in confirmation of the compensation terms settled consequent to the termination of his services. The copies of the two letters appear to us to have been signed by Sahu Shriyans Prasad in ink which has the same hue and shade. This fact cannot be allowed to pass unnoticed considering that a period of nearly six years had elapsed between signing of the two letters. *The said copies of the letters have now been initialled by us with the rubber stamp of our office affixed to them.....*

The Board which had failed earlier to record in its minutes the appointment of Sahu Shriyans Prasad, with all its attending commitment, was, however, not negligent in causing minutes to be made, under date 22-11-1949, of the requisite resolution confirming the payment of the compensation of Rs. 7 lacs. On a probe being made by the Registrar, Joint Stock Companies, Delhi, with regard to the above payment a resolution was brought forward and placed before the shareholders of the company and adopted on 10-4-1952 in order to "approve and ratify the past actions of the Directors and the payment by them of Rs. 7 lacs as compensation to Sahu Shriyans Prasad."

In quoting this passage from the Inspectors' report we are not relying on his opinion—that is irrelevant so far as we are concerned. What we rely on are the facts noticed by him. In the absence of the letter dated 11-10-1943 seen by the Inspector, we have to fall back on secondary evidence. As we cannot see the document for ourselves the evidence of a man who saw it and is able to describe its condition is relevant and admissible. What he says about its condition is a matter of observation and not of opinion.

We also rely on that part of his report to show that, despite the suspicions that the Inspector entertained and expressed in his report about the genuineness of the document, it was deliberately destroyed.

One of the reasons for appointing Inspectors under the Companies Act is to enable government and other authorities to take suitable action should the Inspector find something amiss. If a document is destroyed or evidence is done away with in the face of such findings, an adverse inference can be drawn. So far as we are concerned the inference is that if the document had been produced it would have shown that the Inspector's description of it was correct.

We remark in passing that it seems to have been a favourite device to lose the originals of important documents that are suspicious and to produce photostat copies instead. There is a suspicious want of care about the keeping and preservation of originals while exaggerated importance seems to have been attached to photostat copies. We have found them to be carefully preserved and the originals lost or 'misplaced' in other cases also. We refer in particular to Ex. S. 75 and note that Shriyans Prasad Jain and Shanti Prasad Jain were connected with that as well. Shanti Prasad Jain as a signatory and Shriyans Prasad Jain as one who was present when the original is said to have been drawn up.

The Inspectors' Report is dated 23rd May 1953. In the meantime on 28th February 1953, the company was taken into voluntary liquidation.

On 27th March 1953, a petition was made by D. A. Patel, the Voluntary Liquidator, to the District Judge, Delhi, under Section 153 and 153A of the Indian Companies Act, 1913. On 30th April 1953, the Court approved the Scheme and on 2nd July 1953, i.e., after a month or so from the date of the Inspectors' Report, at a meeting of the Board of Directors of Delhi Glass Works Ltd., to which the assets and liabilities of D.C.P.M. had been transferred, a resolution was passed authorising the Secretary to preserve only such records as would be needed for settling the claims of the shareholders of the transferer company and to dispose of all unnecessary records as he thought proper. Following this resolution (Minutes Book of Delhi Glass Works Ltd.) (Ex. 604/29), the aforesaid letters together with the records of the company were destroyed. The records seized by the Special Police Establishment following a search in November 1953, do not contain any of the letters or the books of account of D.C.P.M.

P. S. Patke (W. 7), Secretary to R. Dalmia, when questioned about the destruction of records of D.C.P.M. deposed as under :

"Ex. 220 shown. I know this transaction. I may have presided. We were paying either Rs. 3,000 or Rs. 4,000 per month to Mr. Shriyans Prasad Jain for looking after our Bombay office and there was a contract for fifteen or twenty years to pay this amount. It was a later though proper to terminate this contract and come to agreement of lump sum payment to Shri Shriyans Prasad Jain in view of unexpired portion of the contract. A partition had already taken place, Mr. G. L. Chokhani was looking after the office after that. I know that Khosla has commented about the authenticity of this contract in his report. I took no care as a director of D.C.P.M. to preserve the letters relating to this contract. The Secretary was supposed to keep all the records. The general directions given to him about the preservation of the records to which I have spoken earlier would have included these as well.

I was a Director of D.C.P.M. for about four or five years. I was a Director up to the date of liquidation. I knew about Khosla's report and that there were several serious complaints in it about the working of the company. To the best of my knowledge, the records of D.C.P.M. were at 10 Daryaganj, and, as far as I know, all the records that were there at that time were seized by the police. If I am told that the records seized by the police do not contain some of the most important documents and papers and none of the books of account, then they must either have been burnt or taken to some other place. Mr. M. R. Jain was mostly associated with the airways work, in both D. I. Airways and D. J. Aviation. He was also connected with Delhi Glass Works. That was the company with which D.C.P.M. was amalgamated.

The witness is asked how one or two or three persons can control a company. He replies, that they had agencies mainly at Calcutta and Bombay. They could thus send instructions to the heads or managers of various companies. No important matter, specially of policy, could be carried out without the consent of the D. J. Group, i.e., these three persons.

So also the floating of companies and their liquidation or amalgamation, and the turning of public companies into private companies, *also the destruction of records and books. The Secretary could not have destroyed the records or the books on his own account. No important paper could have been destroyed without their express instructions.*"

All that has been set out above leads to the conclusion that the letter of appointment dated 11-10-1943, although seen by the Inspectors and initialled by them with the rubber stamp of their office affixed to them as pointed out earlier, was deliberately destroyed; and this was done immediately after the Inspector had drawn up his report and before the same could be examined by Government with a view to possible action thereon.

Again while the documents filed by Shri C. C. Shah, Counsel for Shriyans Prasad Jain, included the letter dated 14-2-1950 confirming the *termination* of the contract of employment with effect from 30th November 1949 *in original*, so far as the letter of *appointment* dated 11-10-1943 is concerned, only a photostat copy was filed.

[Even as regards the letter confirming the termination of the contract of employment, some discrepancy has been noticed in that while the copy that was shown to the Inspector (Appendix II of his report) shows the date as 7-2-1950, the letter now filed before the Commission shows the date as 14-2-1950. Though the contents of these two documents are same, the letter dated 7-2-1950 (Appendix II of the Inspectors' Report) is *not* a correct copy of the letter dated 14-2-1950.]

In response to the Commission's query regarding the original of the letter dated 11-10-1943 (Minutes of the Public Hearing dated 30th September 1961), Shri Shah said that the original letter dated 11-10-1943 was not in the possession of his client, but that the photostat copy filed before the Commission was of the original letter. He, however, agreed to produce a statement from his client indicating when this copy was taken. Later, in the course of his evidence on 21-11-1961 Shriyans Prasad Jain said as under :

Q. Did you file a photostat copy of a letter dated 11-10-1943 ?

A. Yes.

Q. When was this photostat copy taken ?

A. When the case was before the I.T.O.

Q. When was that ?

A. I think it may be somewhere between 1952 and 1955. It is nine years old.

Q. Who took the photograph ?

A. My Income-tax Consultant took the original from me and he went to some photographer and took the copy.

Q. When did you see the original last ?

A. I think I saw the original last somewhere between 1952 and 1955.

Q. Where is the original ?

A. I handed over the original to Mr. Srinivasan who was my Income-tax Consultant and he might have handed over to Income-tax authorities.

Q. Did you consider that document important ?

A. Yes.

Q. Was that document filed ?

A. May or may not have been filed. When I was asked by Shri C. C. Shah to file the original before the Commission then I enquired from my Income-tax Consultant, Mr Srinivasan, to kindly give me back the original copy so that I might file with the Commission. He searched out files and he could not trace it. Then he went to the Income-tax Officer to search the record and to find out whether the original was there. He then found out from the Income-tax records that the original was not there. Then he told me either it was filed with the Income-tax authorities and it might have been misplaced somewhere or it might have been given back to him (Shri Srinivasan), and it might have been misplaced somewhere.

Q. Did you make any search for the original from 1955 to 1961 ?

A. I was sure that it might have been with my Income-tax Consultant.

Q. Do you say that it has been lost ?

A. I cannot say that. It might have been misplaced.

Q. Have you made a search in your papers ?

A. Yes, I did."

The explanation of Shriyans Prasad for not filing the original letter is unsatisfactory and is rejected. There is no proof of loss of the original. The Income-tax Consultant, Shri Srinivasan has not been examined as a witness by Shriyans Prasad.

This failure to produce the original which should be in possession of either Shriyans Prasad Jain or his Income-tax Consultant lends support to the conclusion that the letter, if produced, would have gone against him.

At the time he signed the letter of appointment purporting to have been issued on 11-10-1943, V. H. Dalmia was about 19 years old. When he was examined in regard to his letter on 20-3-1959, the following emerged :

".....The witness is asked whether after he joined D.C.P.M. as Director he took any part in regard to employment of Mr. Shriyans Prasad Jain. He says he has no recollection..... I know nothing of what happened to the books and records of D.C.P.M. after my time. Witness is shown Ex. 240 Page 68. The witness is asked whether he can remember having written any such letter. He states that from a mere copy he is not able to remember this but what I remember is that Shriyans Prasad Jain was working for the company in Bombay for a long time and, amongst other things, he was also watching the interest of the cement sales of Rohtas Industries Ltd., and Dalmia Cement Ltd., for whom D.C.P.M. acted as selling agents....
....."

For one thing, when V. H. Dalmia was examined, the photostat copy was not produced; and even after producing the photostat copy which purports to bear the signature of V. H. Dalmia, the *argument put forward is that there is no proof of the signature.*

In his written statement V. H. Dalmia stated—

"It has been assumed by the Commission that the letter dated 11th October 1943 regarding the appointment of Shri Shriyans Prasad Jain was ante-dated and was not brought into existence till October 1949. The assumption of the Commission is not justified. He states that Shri Shriyans Prasad Jain was in fact appointed by D.C.P.M. on the terms recorded in the said letter dated 11th October, 1943, and the Directors of D.C.P.M. were when aware of the appointment of Shri Shriyans Prasad Jain on the terms therein mentioned."

Shriyans Prasad Jain in his reply has stated,

"The allegations of the Commission that the letter dated 11th October 1943 was not passed on the date it bears and that it was ante-dated and was not brought into existence till October 1949 is wholly unfounded and there is no justification for the Commission to make such allegation. The said letter was signed on 11th October 1943 and correctly records the terms of employment of Shri Shriyans Prasad Jain. The said letter was signed by V. H. Dalmia as a Director of D.C.P.M. with the knowledge and consent of the Board of Directors of D.C.P.M. even if there may be no formal resolution of the Board to that effect. The insinuation of the said particulars that the payment of Rs. 7 lacs was made to Shri Shriyans Prasad Jain because most of the directors of D.C.P.M. were closely related to him or were interested in him is entirely unjustified."

Shanti Prasad Jain in his reply has stated,

"It is assumed by the Commission that the letter dated 11th October 1943 regarding appointment of Shri Shriyans Prasad Jain was ante-dated and was not brought into existence till October 1949. This assumption of the Commission is not justified. He states that Shri Shriyans Prasad Jain was in fact appointed by D.C.P.M. on the terms recorded in the said letter dated 11th October 1943 and the Directors of D.C.P.M. were then aware of the appointment of Shri Shriyans Prasad Jain on the terms therein mentioned. To give the background to the Commission for their proper appreciation of the circumstances necessitating such an appointment, he may add that D.C.P.M. were the sole selling agents for sale of cement manufactured by Dalmia Cement Ltd., and Rohtas Industries Ltd., and D.C.P.M. received remuneration for their such services, pursuant to arrangements made shortly before between Associated Cement Companies and Dalmia Group for common marketing organisation through Cement Marketing Co. of India Ltd.. it was expedient that a very senior man of high status should stay in Bombay on behalf of D.C.P.M. to look after the interests of the Dalmia Group of Cement factories and to represent the Board of Directors of Cement Marketing Co. of India Ltd., in accordance with the arrangement

made with Associated Cement Companies. Shri Shriyans Prasad Jain was persuaded by the Directors of D.C.P.M. to move to Bombay and stay there primarily with this objective. The remuneration and emoluments fixed for Shri Shriyans Prasad Jain were in keeping with the responsibility and position and also the emoluments paid to similar other high executives of directors' status of such companies in Bombay at that time. Since Shri Shriyans Prasad Jain wanted to assure himself of holding the appointment for the full estimated span of his working period and so as not to carry on his own business, the tenure of his office was agreed at 25 years stipulating compensation for premature termination. After the dissolution of the Dalmia Jain Group in May 1948, the position changed. D.C.P.M. ceased to be the sole selling agents of Dalmia Cement and Rohtas Industries Ltd. The employment of Shri Shriyans Prasad Jain was subsequently terminated by D.C.P.M., on payment of stipulated compensation to him. He is not concerned with the rest of the facts, statements, inferences and allegations mentioned in the said section or particulars thereof. He submits that there was nothing done in disregard of honest commercial practice in this matter."

Shanti Prasad Jain in his evidence before the Commission admitted that the decision to appoint Shriyans Prasad Jain was taken by the D. J. Group. He was also a director on the date of appointment of Shriyans Prasad Jain. Later, Shri C. C. Shah, Counsel for Shanti Prasad Jain and Shriyans Prasad Jain, at the time of arguments, submitted that, so far as the first point, namely, "(a) to benefit Shriyans Prasad Jain who was associated with the D. J. Group and was an elder brother of Shanti Prasad Jain"—is concerned, Shanti Prasad Jain had nothing to do with it as he had completely dissociated himself from D.C.P.M. when the compensation was paid.

As regards the second point, namely, "(b) this was a colourable device to evade income-tax on the amount of Rs. 7 lacs in the hands of recipient, Shriyans Prasad Jain"—it was submitted that this matter had been fully dealt with by the Income-tax authorities and was pending for a decision before the Courts. Also, in all these proceedings the letter of appointment dated 11-10-43 had been accepted as a genuine document. It was therefore argued that since the matter was pending before the High Court on a remand by the Supreme Court and was *sub judice*, it would not be proper for the Commission to go into the matter afresh.

He then briefly referred to the orders of the various Income-tax authorities to show how this has been dealt with by them.

Our attention was first drawn to the Income-tax Officer's order dated 30th March 1955 wherein, while the assessee had claimed that the payment of Rs. 7 lacs was made as compensation for loss of employment, the Income-tax Officer held that this was paid as remuneration for his past services. Next he referred to the order of the Appellate Assistant Commissioner, dated 8th March 1956—paragraphs 5, 6, 7 and 8—where the Appellate Assistant Commissioner has stated that "the next and important contention is whether the payment of Rs. 7 lacs made to the appellant by D.C.P.M. is taxable income. Is the payment of Rs. 7 lacs received by the appellant compensation for loss of services as claimed by him or is it by way of

remuneration for the past services. If the agreement in question is valid and its genuineness is not disputed, it would bind the company and the appellant and they would be bound to discharge its obligations. In my opinion the genuineness of the agreement as well as the legality are beyond doubt."

Then he referred to the Income-tax Appellate Tribunal's order dated 13th August 1956 by which the Tribunal decline to allow the Department to challenge the genuineness of the letter of appointment for the first time at that stage and confirmed the order of the Appellate Assistant Commissioner that the nature of the receipt was capital and it was not assessable to tax. Next he referred to the order of the Appellate Tribunal dated 28th March 1957 refusing to refer the case to the Bombay High Court by its order dated 26th March 1958 also declined to call upon the Income-tax Appellate Tribunal to draw up a statement of the case.

The matter was taken to the Supreme Court and by the Court's order dated 8th September 1958 special leave to appeal was granted but "subject to the condition that in the appeal against the order of the Tribunal aforementioned, no question of facts shall be allowed to be raised". Thereafter by its order dated 4th May 1961, the Supreme Court directed the Income-tax Appellate Tribunal to draw up a statement of the case and refer the following question of law :

"whether on the facts and circumstances of the case, the sum of Rs. 7 lacs is liable to tax under section 7 of the Indian Income-tax Act."

Accordingly by its order dated 16th August 1961, the Income-tax Appellate Tribunal drew up a statement of the case and referred to the Bombay High Court the question of law as indicated above.

On these facts Mr. Shah argued that the matter was pending before the High Court and was *sub judice* and might even go to the Supreme Court and it could not be gone into by the Commission.

We do not agree that the matter that we are dealing with *sub judice*. In our opinion it is not. What we are considering is the genuineness of this document. What is before the courts is the consequences that will flow from the document for income-tax purposes on the assumption that it is genuine. In the income tax tribunals proceedings the questions of its genuineness is final, and cannot be reopened there. Actually there was no decision about this on the merits. Because of a slip at the original stage the question of its genuineness was shut out at the later stages. But, so far as we are concerned, it would not have mattered whether the matter was considered and finally decided on the merits or not. Even if there was a final decision on the merits it would be final only for the purposes of those tribunals and would not bind other tribunals or this Commission investigating the matter afresh for another purpose.

This is a principle with which we are familiar in the courts. The same matter is sometimes raised simultaneously in the civil and criminal courts. Defamation and assault are common examples. The finding of the criminal courts would be irrelevant in the civil trial and *vice versa*. So also, unless a matter is *res judicata*, or a decision is *in rem*, the decision, though final and binding as between the parties is not binding otherwise, even between the same parties.

Apart from that, even the decisions of the highest courts are not immune from criticism so long as the matter is not *sub judice*. Newspapers, law journals, periodicals and even observations in other cases by other judges abound in essays and articles and judgments that analyse and criticise the findings of the courts and sometimes even say that the decision was mistaken or wrong; it may be because of some law or precedent that was overlooked; it may be because important facts were not known or were not brought to the notice of the judges; or it may even be because, in the opinion of the writer, the decision was wrong. So long as the comment is fair the writer is immune. That is the essence of freedom of speech and expression in a free democracy.

Commission of Inquiry have the same fundamental right to analyse and criticise as the man in the street when the matter falls within the scope of the inquiry and is covered by the terms of reference. This is a right that they share with the man in the street. But Commission have much more than that. They have not only this Constitutional privilege but also have a statutory duty to discharge when that is required of them by their terms of reference. The ambit of that duty can obviously not be put lower than their rights in respect of the same subject matter when acting on a less exalted plane. We are required here to inquire into specified malpractices, to examine how they were brought about and to suggest remedies for the prevention of like abuses in the future. One of the evils that we find is that even the processes of the courts were used and twisted to improper ends. It is our duty to face the fact fearlessly, examine into the causes, and, if we can, to suggest remedies.

The question before the income-tax authorities, was whether the receipt of Rs. 7 lacs was taxable or not in the hands of Shriyans Pd. Jain. We are not, however, looking into this question *viz.*, taxability or otherwise of the payment of Rs. 7 lacs. What we are concerned with is the propriety of the transaction itself.

It is of course legitimate to enter into a *bona fide* transaction in the ordinary course of business or the conduct of one's personal affairs even when that has the effect of diminishing one's liability to tax. It is legitimate to do this even when the object is to avoid payment of a higher tax. But the transaction must be genuine and not spurious. It is not permissible to create a situation artificially which is not a normal and sound business practice, just to avoid tax. It is not permissible to introduce spurious terms into a contract which were not there at the outset. Of course the terms of contract can be altered by mutual consent. But in the case of a limited liability company that can only be done by a decision of the Board of Directors in a contract of this nature. It cannot be done by ante-dating a letter that purports to be the original letter of appointment in order to make it appear that the terms were there from the start. It is not permissible to introduce fresh terms with a breach of the contract in view in order to reduce the incidence of tax. All that is fraud.

Regarding the further contention that the Income-tax authorities as well as the courts have held that the letter of appointment dated 11th October, 1943 was a genuine document, we may examine the position a little more closely. As will be seen from the I.T.O.'s order, dated 30th March, 1955, he did not at all apply his mind to the question of the genuineness or otherwise of this document, namely, the letter of appointment. Whereas the assessee had claimed before him that the sum of Rs. 7 lacs had been paid

as compensation for loss of employment, he came to the conclusion that this sum represented remuneration paid by the employer for the past services rendered by Shriyans Pd. Jain, and as such he held the amount taxable. He said that "there is no breach of the agreement as stated by Mr. Tricumdas because the amount is paid under the terms of a letter of appointment. It cannot therefore be said that the amount of Rs. 7 lacs is compensation for such employment. I am of the opinion that in view of the past meritorious services of the assessee, the employer has suitably rewarded the assessee for a further payment of Rs. 7 lacs. It is clear from the foregoing paragraphs that Rs. 7 lacs was the remuneration paid by the employer for the past services rendered by the assessee. I therefore assess the same as such."

Coming to the order of the Appellate Assistant Commissioner, dated 8-3-1956 we find that "the question is whether the sum of Rs. 7 lacs received by the appellant is taxable or not. . . . Is the amount of Rs. 7 lacs received by the appellant a compensation for loss of service as claimed by him or is it by way of remuneration for the past services."

The Appellate Assistant Commissioner was not called upon to decide whether the letter dated 11th October was a genuine document or not, and since the Income-tax officer had not challenged its genuineness in his order, he proceeded to examine the terms of agreement and came to the conclusion that the receipt by the appellant represented compensation for loss of employment and the same did not therefore attract tax.

The Income-tax Department thereupon went on appeal to the Appellate Tribunal against the order of the Appellate Assistant Commissioner. Here the Departmental representative *challenged the genuineness of the letter of appointment. But the tribunal did not allow him to raise this question at that stage.* The Tribunal's order states "the department has come in appeal from the order passed by the Appellate Assistant Commissioner. The departmental representative challenges the genuineness of the letter which is said to be the basis of the arrangement between the assessee and D.C.P.M. Ltd. *According to the departmental representative this letter has been brought into existence at a later date. It is not correct for the department at this stage to attack the genuineness of the agreement for the first time. . . .* we think that on the evidence on record the amount of Rs. 7 lacs received by the assessee is not a payment made for past services. The nature of the receipt is capital which is not assessable to tax."

Thereafter the Commissioner of Income-tax, Bombay requested the Appellate Tribunal to draw up statement of the case and refer the question of law, which was said to arise out of the Tribunal's order, to the High Court. The Tribunal came to the conclusion that no question of law arose out of its order. By its order, dated 28-3-57 the Tribunal refused to draw a statement of the case for the High Court.

Paragraph three of this order of the Tribunal states, "before the Tribunal the Department challenged the genuineness of the letter of appointment which forms the basis of the agreement between the assessee and D.C.P.M. Ltd. Dealing with this the Tribunal observed *"if the genuineness of the letter of appointment was to be questioned, the Income-tax officer, should have summoned the assessee and examined him.* The Appellate Assistant Commissioner has come to the conclusion that the letter is genuine and we have no reason to disagree with his finding given on this point."

The Commissioner's petition to the Bombay High Court for an order directing the Income-tax Appellate Tribunal to draw up a statement of the case and raise and refer to the High Court the question of law referred to therein, was also turned down.

The Supreme Court, however, by its order, dated 8th September, 1958 allowed the Commissioner's petition for special leave to appeal. But it specifically laid down that this permission to appeal was "subject to the condition that in the appeal against the order of the Tribunal aforementioned no questions of fact shall be allowed to be raised". It will thus be clear that the question of the genuineness or otherwise of the letter dated 11th October, 1943 was not canvassed before the authorities referred to above and there is, therefore, no bar to our examining this matter.

We do not deny that Shriyans Pd. Jain worked for D.C.P.M. from 1943 and that he drew the remuneration specified in the liquidators letter of the 1st May, 1953 to Messrs. D. P. Khosla & Co.; nor do we question that the income-tax was paid as stated during that period. We have questioned, in another place, the reasonableness of the terms but not the fact of appointment on those terms. What we are questioning here are the terms about the period of employment and the provision about the payment of compensation for the breach that finds place in the impugned letter. In our opinion that was an after-thought. We are of the view that those terms *do not appear in the original contract*. The scheme to defraud the exchequer by this ingenious device was devised later and the impugned letter was forged and ante-dated in furtherance of that scheme.

In the circumstances indicated above, specially regarding the destruction of the letter immediately after the Inspector had drawn up his report and in face of the fact that the Inspector had questioned the genuineness of this document and initialled it and affixed the rubber stamp of his office to it; and also in view of the failure of Shriyans Pd. Jain to produce before the Commission the original letter which was with him and the very important fact that during this period there were similar payments of compensation for the supposed breaches of managing agency and selling agency agreement in a number of other cases, we are entitled to draw the conclusion that this is one more instance of the device adopted to evade and avoid payment of substantial income-tax.

It is to be noted that when Shriyans Pd. Jain entered the witness box he did not attempt to justify the transaction or to repudiate the charges of ante-dating and fraud made against him, in examination in chief. He said nothing about the terms mentioned in the letter of appointment. It was only when he was cross-examined about these matters that he attempted to justify them. That is not the normal reaction of a person who is accused of serious charges and has the opportunity of repudiating them in the witness box. A person wrongly accused of frauds of this nature would be righteously indignant and would take the earliest chance to vindicate himself. Of course he has the right to keep his mouth shut and to demand that the facts be proved. But once they have been proved, if he still keeps quiet, his conduct can be taken into account against him.

But for this termination of Shriyans Pd. Jain's employment the Company would have been required to pay a sum of about Rs. 8,64,000 over a period of 18 years and four months but it would have got the benefit of his services.

Against this amount the Company paid Rs. 7 lacs which is more or less the same as the discounted value of Rs. 8,64,000 when payable over 18 years and four months; but it lost the benefit of his services.

Fixing a period of employment for a term of 25 years is astonishing especially in a company that was not able to pay dividends and had to borrow money on the scale that it did and which in the end had to go into liquidation. The term that compensation should be paid at the rate of Rs. 4,000 a month for every month of the unexpired term was even more amazing. What business company has terms of this kind. The other instances that we have cited elsewhere of similar schemes for compensation lead to the conclusion that this was part of a pattern—a clever and well thought out scheme to defraud the exchequer.

Then there is the astonishing fact that no formal agreement was executed and that there is no resolution of the Board of Directors about this appointment in the minutes. This cannot be carelessness or accident because the appointment of the Managing Director in July 1947 and of the Secretary in September were specifically considered and approved by the directors. It is hardly likely that an almost routine appointment like that of a Secretary would be placed before the Board and considered and not the very extraordinary kind of appointment that we find here. If this term of 25 years with provision for payment of the very heavy compensation that we find in the impugned letter had really been terms of the original appointment the matter would certainly have been placed before the Board and we would have expected a formally drawn up agreement.

Then again the impugned letter bears no reference number. This is another feature that we have found in the case of other impugned transactions. It cannot be accident that it is just these questionable transactions that have so many unusual features in common.

During this period the Bharat Bank, in which the investing public was interested, held 1,400 Preference shares in D.C.P.M. (out of its 25,000 Cumulative Preference shares).

During the period 1943 to 1950 the following were the Directors of D.C.P.M. :

S. P. Jain	20-12-41 to 1-11-47
Smt. Rama Jain	20-12-41 to 10-7-47
J. Dalmia	26-8-44 to 3-11-47
V. H. Dalmia	15-5-43 to 21-10-47
M. K. Roy	15-5-43 to 12-2-53
H. D. Bishnoi	17-9-44 to 12-12-49
S. R. Srivastava	15-1-49 to 15-2-52
Raizada Jagmohanlal	15-1-49 to 29-5-50

Shanti Pd. Jain, Smt. Rama Jain, J. Dalmia and V. H. Dalmia had ceased to be Directors on 1-11-47, 10-7-47, 3-11-47, 21-10-47 and the other Directors were subservient, the real responsibility lies with R. Dalmia, though the other directors also cannot be altogether absolved from their liability.

CHAPTER XI

PERSONAL EXPENSES CHARGED TO COMPANY'S REVENUE ACCOUNTS

The personal and other expenses of R. Dalmia amounting to Rs. 4,62,339 were charged in the accounts of D.C.P.M. between the period 1-3-48 and 28-2-51 even though R. Dalmia was neither a director nor an officer of the company during the said period. D.C.P.M. in its turn obtained funds from Banks, Insurance Companies and other public limited companies.

This provides another instance of utilising the common control over D.C.P.M. and other companies of the Group for the personal benefit of the D. J. Group and in particular of R. Dalmia.

The personal expenses of R. Dalmia incurred at 9, Mansingh Road, 3 Sikandra Road and at other places were charged to D.C.P.M. These expenses were incurred through—

- (i) *P. S. Patke* :—He was the Secretary of R. Dalmia. He was also a Dummy Director of D.C.P.M. from 20-5-50 onwards. His salary ranged from Rs. 150 to Rs. 650 per month.
- (ii) *G. Ramachandran* :—He was employed by D.C.P.M. as a Stenographer from 1947 onwards. He was drawing a salary between Rs. 220 and Rs. 300 per month.
- (iii) *N. C. Jain* :—He was an employee of D. J. Group.
- (iv) *S. R. Srivastava* :—He was a director of D.C.P.M. from 15-1-49 to 15-3-1952. He was also the "household" Secretary of R. Dalmia (W. 7/p. 4).
- (v) *S. N. Dudani* :—He was the Secretary of D.C.P.M.

The details of these expenses totalling of Rs. 4,62,339 are set out below :—

	Rs.	Rs.
<i>During 1948-49 (Ex. 240/81)</i>		
(i) Through P. S. Patke at 9, Mansingh Road	1,14,448	
(ii) Through New Delhi office of D.C.P.M.	52,439	
(iii) Other personal expenses of R. Dalmia	96,215	
		2,63,102
<i>During 1949-50: (Ex. 240/81)</i>		
(i) Through P. S. Patke at 9, Mansingh Road	59,311	
(ii) Through N. C. Jain at Sikandra Road	16,922	
(iii) Through New Delhi office of D.C.P.M.	22,451	
(iv) Other personal expenses of R. Dalmia	1,372	
		1,00,056
<i>During 1950-51 : (Ex. 240/81)</i>		
(i) Through P. S. Patke and G. Ramachandran	48,571	
(ii) Through N. C. Jain	19,424	
(iii) Through New Delhi office of D.C.P.M.	28,420	
(iv) Other personal expenses of R. Dalmia	2,766	
		99,181
		4,62,339

Details of "other personal expenses" of Rs. 1,00,353 charged to D.C.P.M. and referred to above are as follows (Ex. 240/37, 38, 39).

During 1948-49

Rs.

8,717	Payment for round the World Tour expenses of Miss Pritam Thakat Singh.
1,975	Cost of paper and printing charges of pamphlet 'One World Government.'
1,461	Cost of paper and printing of 'Sram dan' written by Mrs. Dinesh Nandni Dalmia (Wife of R. Dalmia).
195	Purchase of Perambulator.
2,391	Purchase of a Refrigerator.
582	Purchase of a Silver Tea Set & Tray.
4,000	Payment made by debit of Miscellaneous expenses in Bombay Books.
76,894	Payment of Khaitan & Co., Solicitors, Calcutta.

96,215

During 1949-50

Rs.

916	Purchase of a Flour Mill for domestic use.
456	Purchase of Gramophone Machine and records.

1,372

During 1950-51

Rs.

2,185	Purchase of a Rolex Projector.
581	Purchase of Crystal Glassware.

2,766

GRAND TOTAL : Rs. 1,00,353.

The personal expenditure of R. Dalmia was debited in the books of D.C.P.M. under instructions of R. Dalmia (W. 7/p. 44). R. Dalmia told P. S. Patke that he had arrangements with D.C.P.M. whereby he would make good all these amounts (P. S. Patke W. 7/p. 44). But in fact the amount of Rs. 4,62,339 was not refunded.

The Bungalows at 9, Mansingh Road, and 3, Sikandra Road were used by R. Dalmia for his residential purposes (Ex. 240/81 and P. S. Patke W. 7/p. 44).

R. Dalmia used the following properties of D.C.P.M. free of rent for at least the period stated against each property (Ex. 240/41).

(a) 9, Mansingh Road, New Delhi	.. ..	From 1-3-48 till it was sold on 29-6-50.
(b) Mussoorie property.. ..	.. ..	From 1-3-48 till it was sold on 17-9-48.
(c) Nagwas House, Banaras .. ..	.. ..	From 17-9-48 till it was sold on 30-11-50.
(d) Hardwar Kothi .. ..	.. ..	From 1-3-48 to 18-1-50.

R. Dalmia was neither a Director nor an Officer of D.C.P.M.

The following were the directors of D.C.P.M. during 1948 to 1951, the period during which the above personal expenditure of R. Dalmia was debited to D.C.P.M.'s accounts :

1. Vasudeo Agarwal.
2. M. K. Roy.
3. H. D. Bishnoi.
4. Shyamlal Agarwal.

5. M. P. Modi.
6. S. R. Srivastava.
7. Raizada Jagmohanlal.
8. P. S. Patke.

Shanti Prasad Jain and J. Dalmia stated in their written statements that they had no concern with D.C.P.M. from and after 31st May 1948 and so far as they were aware no personal expenses of R. Dalmia were charged to D.C.P.M. up to 31st May 1948.

H. D. Bishnoi stated that he does not remember under what circumstances the alleged personal expenses of R. Dalmia were debited in D.C.P.M.'s Books.

M. P. Modi, stated that he was a director of D.C.P.M. for a short period of three months, during which he might have attended a meeting of the Board of the Company. He does not remember to have been a party to any of these transactions and "in the absence of relating records it is not possible for him to admit or deny the allegations". He has, however, denied that he was a "Dummy" director.

Raizada Jagmohanlal stated in his reply that "the individual items of expenses were not furnished to the Directors but only a consolidated figure is shown in the balance sheets; and believing as the directors did, that the accounts had been properly checked and scrutinised by the auditors, the directors believed that there was nothing irregular or unconstitutional about it". He has also stated that he had no knowledge about such expenses and that it is now for the first time that it has come to his notice that the personal expenses were debited to the company.

S. R. Srivastava has stated in his reply that he has no definite information whether R. Dalmia took money for his personal expenses from D.C.P.M.

It is clear from what has been stated above that the Directors were subservient to R. Dalmia and that R. Dalmia was in real control of D.C.P.M. It is also clear on a perusal of the details of the personal expenses debited to D.C.P.M. that they were purely for personal purposes of R. Dalmia and had nothing to do with the business of D.C.P.M. That the charging of such personal expenses to the account of D.C.P.M. was possible clearly indicates the control that R. Dalmia had over D.C.P.M., even though he was not a director or an officer of that company. It is improper to charge personal expenses to the company's account.

It is to be noted that D.C.P.M. incurred these personal expenses for and on behalf of R. Dalmia at a time when it had to borrow funds from banks, Insurance Companies and other public limited companies. This was clearly in Disregard of Honest Commercial Practice.



CHAPTER XII

ILLEGALITIES

Section 86-D of the Indian Companies Act, 1913, prohibits any loan or guarantee, any loan to a Director of the company or to a firm of which such Director is a partner or to a private company of which such Director is a member or Director. In the event of any contravention of this Section any director of the company who is a party to such contravention is punishable with fine which may extend to Rs. 500; and if default is made in repayment of the loan or in discharging the guarantee, is liable jointly and severally for the amount unpaid.

If a Director or any firm of which he is a partner or any private company of which he is a Director, accepts a loan or guarantee from the company in contravention of Section 86-D, the office of such Director has to be vacated as per Section 86-I(g) of the Indian Companies Act, 1913.

Since the books of account of D.C.P.M. have not been made available, we have relied, as secondary evidence on the particulars as furnished by Shri D. P. Khosla in his report (Ex. 240/pages 52 to 54) on the investigation into the affairs of the company under section 138 of the Indian Companies Act, 1913. The following particulars were furnished.

- (a) *S. R. Srivastava* :—On 26th August 1959, D.C.P.M. advanced a sum of Rs. 7,500 through its New Delhi office to S. R. Srivastava who was at that time a director of D.C.P.M. He continued to be a director of D.C.P.M. even after the advance was made down to 15th March 1952.
- (b) *H. D. Bishnoi* :—D.C.P.M. granted advances to Allenberry & Co. Ltd., a private limited company of which H. D. Bishnoi was a director. The balance of the advance as on 28-2-1949 was Rs. 1,08,34,817. H. D. Bishnoi was also a director of D.C.P.M. The common period of the directorship was from 1st March 1948 to 12th December 1949.
- (c) *M. K. Roy* :—D.C.P.M. advanced money to Dalmia Jain & Co. Ltd. one of whose directors was M. K. Roy. The balance of the advance as on 28-2-1949 was Rs. 17,000. He was also a director of D.C.P.M. The common period of directorship was from 8th March 1948 to 28th February 1951.
- (d) *Raizada Jagmohanlal* :—D.C.P.M. advanced moneys to Rashtriya Investors Ltd. Raizada Jagmohanlal was one of the directors of D.C.P.M. and also a director of Rashtriya Investors Ltd. The common period of directorship was from 5th January 1949 to 21st February 1949.
- (e) *P. S. Patke* :—D.C.P.M. granted advances to Edward Keventer(s) Ltd. The balance of advances as on 28-2-1951 was Rs. 2,67,495. P. S. Patke was one of the directors of D.C.P.M. and was also a director of Edward Keventers (S) Ltd., from May 1950 onwards.

The statements of Matters in respect of this section was served on—

1. R. Dalmia.
2. S. P. Jain
3. J. Dalmia.
4. Shriyans Prasad Jain.
5. Shital Prasad Jain.
6. H. D. Bishnoi.
7. Jagmohanlal Raizada.
8. S. R. Srivastava.
9. R. D. Agarwal, Liquidator of Delhi Glass Works Ltd.
10. P. S. Patke.
11. M. K. Roy.
12. South Asia Industries Ltd.
13. Dalmia Dadri Cement Ltd.
14. Allenberry & Co. Ltd.
15. Bharat Union Agencies Ltd.
16. Asia Udyog Ltd.

The following did not reply :

1. R. Dalmia.
2. Shital Prasad Jain.
3. P. S. Patke.
4. Dalmia Dadri Cement Ltd.

The following replied but raised only legal and technical objections :—

1. M. K. Roy.
2. South Asia Industries Ltd.
3. Allenberry & Co. Ltd.
4. Bharat Union Agencies Ltd.
5. Asia Udyog Ltd.

H. D. Bishnoi in his reply has stated that to the best of his knowledge no provisions of the Companies Act were contravened in granting these loans.

R. D. Agarwal, liquidator of Delhi Glass Works Ltd., stated in his reply that he never came into possession of any books or records of D.C.P.M. and as such he has neither any record nor information or knowledge regarding the affairs.

J. L. Raizada has stated in his reply that the advance was made by D.C.P.M. to Rashtriya Investors Ltd., when he was a director of both the companies. But he says he was a director of D.C.P.M. only during 15-1-1949 to 24-5-1950 and the period of common directorship has been stated to be from 5-1-1949 to 21-2-1949, i.e., one month and six days. J. L. Raizada states that the period is small and he did not attend any meeting authorising the advance.

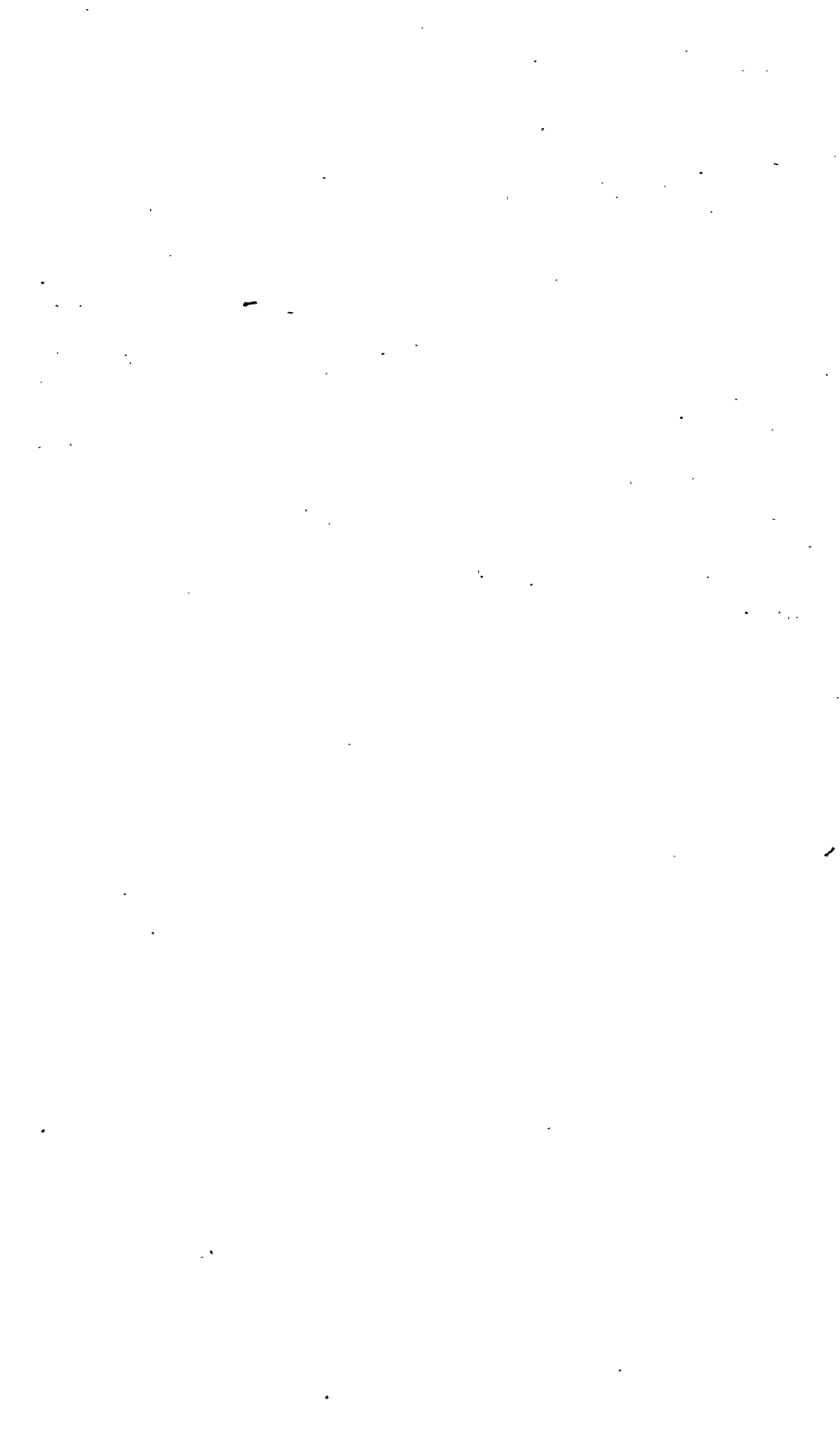
S. R. Srivastava in his reply has stated that no advance was ever paid to him by D.C.P.M. during his directorship nor did he ever apply for any such advance. But the Inspector has clearly stated (at page 52 of his investigation report) that the Ledger page 341 showed that D.C.P.M. advanced a sum of Rs. 7,500 to S. R. Srivastava on 26th August 1949—though the same was repaid on 31st October 1949.

Shanti Prasad Jain and J. Dalmia in their written statements stated that since these transactions relate to the period subsequent to 31st May 1949, they were neither aware of nor concerned with, nor responsible for the same.

The other directors have not cared to state anything in rebuttal of the facts and inferences set out in this particular section of the Statement of Matters and as such, the allegations made therein on the basis of the materials brought on record by the Inspector in his report (Ex. 240) on the investigation into the affairs of the company will stand.

Our conclusion is that there was a contravention of Section 86-D and 86-I(g) of the Indian Companies Act, 1913.

The relevant provisions have since been made wider in scope and the penal provisions more stringent by the Companies Act, 1956 and also by the Companies (Amendment) Act, 1960. But we are not concerned with the amendments as we are dealing with contraventions that took place during 1948-49.



CHAPTER XIII

LOSS ON SHARE TRANSACTIONS

In the Chapter under the heading "General and Control" it has already been shown that D.C.P.M. was under the effective control first of the D. J. Group and later of R. Dalmia. We have also separately dealt with how the corporate existence of D.C.P.M. was utilised in borrowing large sums of money mostly from the companies in which the investing public were interested and banks and Insurance companies under the control of the D. J. Group and thereafter diverting the sums so borrowed for the use of sister companies and/or acquiring new companies with sound financial position and liquid reserves and all this for the benefit of the D. J. Group and later of R. Dalmia. We have also discussed separately how the common control over D.C.P.M. and other companies of the Group helped the persons concerned, that is to say, first the D. J. Group and later R. Dalmia, to acquire control of companies outside the D. J. Group, such as, Bennett Coleman & Co. Ltd., Lahore Electric, S.S.B. Mills Ltd., and M.D.M. Co. Ltd., and having acquired the control, to transfer the shares of the companies so acquired to the public limited companies, banks and Insurance companies towards repayment of the funds so borrowed and so on.

We will now show how the D. J. Group and later R. Dalmia utilised this common control over D.C.P.M. and other companies of the Group—

- (i) to deprive the investing public of their legitimate share of the profits and transfer the same to D.C.P.M. for the benefit of the members of the Group and later R. Dalmia; and
- (ii) to control the overall taxation liability of the Group by wrongful diversion of the taxable profits from other companies to D.C.P.M. thus creating fictitious losses which were set off against the profits so diverted.

The profits diverted to D.C.P.M. from the other companies of the Group were as under :

Year ended 29-2-1948 :

- (i) In the year ended 29-2-1948, a profit of Rs. 14,97,347 was fraudulently transferred to D.C.P.M. from Allenberry's Joint Venture Business in Disposal Vehicles and Stores (Ex. 496).
- (ii) A further profit of Rs. 12,09,000 was transferred to D.C.P.M. from Allenberry's business Drums and Pipelines (Ex. 739).

Year ended 28-2-1949 :

- (i) In consequence of the transfer of Drums and Pipelines stock worth Rs. 52 lacs, a further profit of Rs. 10,25,000 was transferred to D.C.P.M. in the year ended 28-2-1949 from Allenberry's business in Drums and Pipelines (Exs. 461 and 739).

Year ended 28-2-1950 :

- (i) In consequence of the transfer of Drums and Pipelines Stock worth Rs. 52 lacs, a further profit of Rs. 10 lacs was transferred to D.C.P.M. from Allenberry's business in Drums and Pipelines (Exs. 237 and 739).

Year ended 28-2-1951 :

- (i) A further profit of Rs. 11,56,982 was transferred to D.C.P.M., also in consequence of the transfer of Drums and Pipelines stock worth Rs. 52 lacs, from Allenberry's business in Drums and Pipelines (Ex. 238).
- (ii) Besides the above profit of Rs. 11,56,982, the results of the company's regular trading activities also disclosed a total gross profit of Rs. 30,96,793 (Ex. 238).
- (iii) The company moreover obtained further gains of,
 - (a) Rs. 21,20,582 (21,19,586 on the sale of Nahur Land to Bharat Insurance Co. Ltd. and Rs. 996 appreciation on sale of Buildings) (Ex. 238).
 - (b) Rs. 46,90,000 by way of compensation for premature termination of the selling agencies of the two mill companies, S.S.B. Mills Ltd. and M.D.M. Co. Ltd. (Ex. 238).

We have dealt with the above items in Vol. III, Part 2, Vol. IV, Part 1 and Vol. VI, Part 1.

In spite of the receipt of the aforesaid profits, besides others from the regular business of D.C.P.M., its audited profit and loss accounts for these years showed small profits or even losses as shown below :

Year ended	Total profit diverted to and/or obtained by D.C.P.M. as referred to above	Net Revenue result as per audited Profit & Loss account		Ex. No.
		Profit	Loss	
	Rs.	Rs.	Rs.	
29-2-1948	14,97,347	2,51,755	—	(Ex. 461)
	12,09,000			
	27,06,347			
28-2-1949	10,25,000	—	4,41,449	(Ex. 497)
28-2-1950	10,00,000	85,518	—	(Ex. 237)
28-2-1951	11,56,982	57,51,824*	—	(Ex. 238)
Other trading profits ..	30,96,793			
On sale of Nahur Land ..	21,20,582			
Compensation for premature termination of selling agencies.	46,90,000			
	1,10,64,357			

*NOTE.—The figure of Rs. 57,51,824 includes,

(i) Rs. 46,90,000—received as compensation;

(ii) Rs. 21,20,582—profit on sale of Nahur Land; an item of profit not arising out of the company's normal trading activities;

making up a total of Rs. 68,10,582 which on deduction from Rs. 57,51,824 would have left Rs. 10,58,758 as *net loss* arising from the company's normal trading activities.

The aforesaid small profits or losses as per the audited accounts were arrived after adjustment of losses in share dealings and/or speculation or on sale of investments, as under :

Year ended	Particulars	Loss	Profit	Net loss transferred to profit and loss account
		Rs.	Rs.	Rs.
29-2-1948	On sale of Investments	12,00,000	1,430	
	On dealings in shares and securities.	1,19,321	16,999	
			2,031	
		13,19,321	20,460	12,98,861 (Ex. 461)
28-2-1949	On sale of investment	14,74,221	89,489	
	On sale of securities	295	—	
	On sale of shares	4,78,001	2,608	
		19,52,517	92,098	18,60,419 (Ex. 497)
28-2-1950	On sale of investments	2,82,945	863	
	On sale of securities	1,95,477	—	
	On dealings in shares	9,394	120	
		4,87,816	983	4,86,833 (Ex. 237)
28-2-1950	On sale of investment	24,15,833	1,753	
	On sale of securities	—	83,630	
	On dealings in shares	50,25,420	29,93,305	
		74,41,253	30,78,688	43,62,565 (Ex. 238)

In each of the aforesaid four years, except 1950-51, the profits earned in share transactions were very small or even negligible *vis-a-vis* the losses shown as having been sustained therein.

As will be seen from what follows, these losses were mostly comprised of the following fictitious or artificial losses in share dealings and/or speculation and/or on sale of investments that were created by fraudulent manipulation of accounts.

								Rs.
Year ended 29-2-48	..	..	..	..	..	..	..	12,00,000
Year ended 28-2-49	..	..	..	..	..	..	..	16,90,165
Year ended 28-2-50	..	..	..	..	..	..	..	2,72,118
Year ended 28-2-51	..	..	..	..	..	..	..	24,28,316

The fraudulent manipulation of accounts as mentioned in the preceding paragraph was effected as follows :

- (i) Artificial transactions in purchase of shares at higher rates and subsequent sale thereof at lower rates were brought into existence by recording necessary entries in the accounts of D.C.P.M. to create fictitious losses.
- (ii) Sales of shares were shown in the accounts of D.C.P.M. deliberately at rates much below their cost price in the hands of the company.
- (iii) Sale transactions were even ante-dated with a view to control and manipulate the profits of a particular year.

- (iv) By recording and accounting for share dealings and speculative transactions in the books of D.C.P.M. as its own business even though these were done in the account of R. Dalmia and/or others.

The following specific instances may be cited to illustrate how the accounts of the company were deliberately manipulated :—

(a) (i) D.C.P.M., Bombay bought 5,778 Preference and 1,620 Ordinary shares of Bennett Coleman & Co. Ltd. for Rs. 16,42,863 and Rs. 32,400 respectively by 28-2-1948 and transferred these amounts to its Dalmianagar Head Office on 15-1-1949 under relevant debit advices dated 28-2-1948. This office similarly transferred in July, 1948, a further purchase of 10 Preference Shares for Rs. 3,609-3-0. (Ex. 363).

But till 10-2-1949 the Head Office had not responded to the afore-said transfer entries in the Bombay Office books and this fact was pointed out by the latter in its letter dated 10-2-1949 to the New Delhi Office of the Company.

(ii) On 11-2-1949 the Delhi Office accordingly brought to the notice of the Dalmianagar Office this omission of entries in its books to the credit of the Bombay Office. The Head Office was further advised to make necessary corrections by debiting the amounts in question in the Delhi Office account for incorporation in the Company's investment account in Delhi Books. (Ex. 363).

(iii) On 14/15-2-1949, the Dalmianagar Office sent to Delhi its debit advice dated 11-2-1949 for Rs. 16,75,263-5-0 being the cost of the Preference and Ordinary shares in question. (Ex. 363).

(iv) The above debit advice dated 11-2-1949 was, however, returned by Shital Prasad Jain on 21-2-1949 to H. D. Bishnoi at Dalmianagar for reversing the relevant entry there and making entries as per directions quoted below :—

"It is now desired that D.C.P.M., Dalmianagar, may sell these shares to Dalmia Investment Co. Ltd. as on 28-2-1948. Please, therefore, get the entry made in the books of DCPM and Dalmia Investment, Dalmianagar."

He was also advised to raise similar entries for sales in the books of D.C.P.M. and Dalmia Investment, Dalmianagar, in respect of the further 10 Preference Shares of Bennett Coleman & Co. Ltd., worth Rs. 3,609-3-0 already transferred by D.C.P.M., Bombay, in July, 1948.

In this connection Shital Prasad Jain also gave instructions as to how to meet the difficulties that might arise for making the necessary entries to show the shares as sales to Dalmia Investment Co. Ltd., as on 28-2-1948.

(v) R. L. Srivastava in reply dated 3/4-3-1949 (Ex. 363) explained the reasons why the entries for the proposed sales of shares, if raised in the books of Dalmia Investment Co., would be considered an after-thought and sought Shital Prasad Jain's instructions in this connection. (Ex. 363).

He also pointed out that the entries relating to the further 10 Preference Shares transferred from the Bombay Office had already been raised in the Dalmianagar Books on 31-12-1948 but said that the revised entries for these shares shown as sale to Dalmia Investment would be passed as proposed on receipt of instructions from Shital Prasad Jain.

R. L. Srivastava, moreover request Shital Prasad to advise the rate at which DCPM would sell the shares to Dalmia Investment Co.

(vi) In spite of the aforesaid difficulties, Shital Prasad Jain in his letter, dated 7-3-1949 advised H. D. Bishnoi as below (Ex. 363):—

"The difficulty pointed out by R. L. Srivastava is in my view, but it is very desirable that DCPM, Dalmianagar, sell the shares under reference of Bennett Coleman & Co. Ltd., to Dalmia Investment Co. Ltd., as on 28-2-1948. You, may, therefore, get the entry made and Dalmia Investment pay the amount to DCPM at Dalmianagar by HUNDI on Dalmia Investment Co. Limited, New Delhi, on 31-12-1948."

He further advised that all these sales should be made "at the purchase value of DCPM or at most at a figure very near to same that may result due to rounding of rate per share." (Ex. 363).

(vii) The cost of 5,778 Preference Shares in the hands of DCPM was about Rs. 284-6-0 per share. The following further purchases of Bennett Coleman Preference Shares made by DCPM from other parties would, however, indicate that the prevailing rate of these shares, even on 28-2-1948 or thereabout, was altogether different from the said rate of Rs. 284-6-0 which, as per Shital Prasad's advice, was to be adopted for the purported sales by Dalmianagar Office to Dalmia Investment Co. as on 28-2-1948 (Ex. 240).

Date	Purchased by	From whom Purchased	No. of shares	Purchase rate
1-3-48	Bombay Office	S.S.B. Mills	15,000	560 4 0
31-5-48	Bombay Office	T.K. Stanley	10	350 0 0
31-8-48	New Delhi Office	Dalmia Jain Charity Trust	825	550 0 0

(b) Further, rates of purchases or sales of the same type of shares though effected by DCPM at short intervals varied widely. Some of the instances are :—

Date of transaction	Bought from or sold to	Name of the Party	Particulars of shares	Rate per share
(a) 28-2-1949	Sold to	Rashtriya Financial Corporation Ltd.	18,812 Convn. SSB Mills Ltd.	275 ½ 0 0
30-4-1949	Bought from	Do.	32,812 Convn. SSB Mills Ltd.	200 0 0
(b) 28-2-1949	Sold to	Do.	10,915 Defd. MDM Co. Ltd.	23 0 0
30-4-1949	Bought from	Do.	17,400 Defd. MDM Co. Ltd.	5 0 0
(c) 28-2-1949	Sold to	Do.	42,850 B-LESCO	40 0 0
30-4-1949	Bought from	Do.	60,160 B-LESCO	13 0 0
(d) 28-2-1949	Sold to	Do.	4,613 A-LESCO	400 0 0
30-4-1949	Bought from	Do.	21,528 A-LESCO	130 0 0
(e) 31-5-1949	Sold to	Bharat Journals Ltd.	2,250, Pref. Bennett Coleman.	560 4 0
31-5-1949	Bought from	Rashtriya Financial Corpn. (by LESCO through DCPM).	2,250 Pre. Bennett Coleman.	200 0 0

(c) As regards the *quoted shares* the following instance would indicate how the persons in control manipulated the market quotations with a view to obtain artificial "quoted rates" in pursuit of their own objects. Such quotations were needed in connection with the "reshuffling" of their shareholdings and controlled concerns *inter se* from time to time.

(i) *Letter from S. N. Dudani to Shri G. L. Chokhani, dated 24th June, 1952 (Ex. 491) :—*

"Under instruction of Syt. R. Dalmiaji, I would request you to please arrange to publish the rates of Shapurji & Madhowji Conversion Shares at Rs. 200 and Rs. 300 respectively in Times of India both in Bombay and Delhi editions at least for two days. Please treat it as most urgent." (Ex. 491).

(ii) *Letter from Shital Prasad Jain to G. L. Chokhani :—*

"My dear Girdharilalji,

Syt. Dalmiaji desires that you please arrange that Deferred Shares of S.S.B. Mills and M.D.M. are quoted lower than the present market quotations which are probably at present Rs. 5 for S.S.B. Mills and Rs. 15 for M.D.M. As soon as you have arranged it, please let me know on what date what quotation has been arranged." (Ex. 588).

It would thus be seen that the persons in control of D.C.P.M. indulged in the creation of "artificial transactions", effected purchases and sales of the same type of shares at short intervals at widely varied rates and also arranged for extraneous considerations and for creating losses as a set off against the profits of the company.

The nature of the transactions which resulted in the losses during the years ended, 29-2-48, 28-2-49, 28-2-50 and 28-2-51 are briefly discussed below, yearwise :—

A. Year ending 29-2-48. For the year ended 29th February, 1948, the Company manipulated its accounts so as to create and charge to its revenue a fictitious loss of Rs. 12 lakhs on the sale of 500 shares of Dharangdhara Trading Co. Limited (Ex. 461). This fraudulent manipulation of accounts resulted in a reduction of the company's profits to the extent of the fictitious loss, namely, Rs. 12 lakhs.

B. The Dharangdhara Trading Co. Ltd., a D. J. Concern on whose shares the aforesaid loss is claimed to have been sustained, was a private limited company at Dharangdhara (Sourashtra) with a paid-up capital of Rs. 50,000 (made up of 1,000 ordinary shares of Rs. 100 each, of which Rs. 50 per share only had been called up) (Exs. 589 and 1049). It acted as selling agents to Dharangdhara Chemical Works Limited, Dharangdhara. Another D. J. Concern (Exs. 589 and 1050) Govan Brothers Limited acted as the Managing Agents to Dharangdhara Chemical Works Limited. In Dharangdhara Chemical Works Limited, Shriyans Prasad Jain and V. H. Dalmia were directors in December 1946, while in Govan Brothers V. H. Dalmia was the Managing Director (Ex. 589 and Ex. 1050).

C. DCPM paid a sum of Rs. 24 lakhs for 500 shares of Dharangdhara Trading Co., 600 shares of Govan Brothers Limited and a share in the Managing Agency income of Dharangdhara Chemical Works Limited. Of this Rs. 22 lakhs were allocated as the value of 500 shares of Dharangdhara

Trading Co. Limited thus valuing these shares at Rs. 4,400 per share (Ex. 496 and Ex. 589). These shares were shown to have been sold on the 29th February, 1948, that is, on the closing date of the accounting year of DCPM, to Shanti Prasad Jain for a sum of Rs. 10 lakhs only at Rs. 2,000 per share (Ex. 496). DCPM thus sustained a loss of Rs. 12 lakhs on the sale of the said 500 shares of Dharangdhara Trading Co. Limited (Ex. 496).

D. Enough material is available to show that there was no sale of these shares till at least the 31st August, 1948. The accounts were however fraudulently manipulated with a view to ante-dating the sale on 29th February 1948, the object apparently being to reduce the profits of DCPM for the year ending 29th February, 1948, artificially and thus to evade the proper incidence of income-tax payable by the company for this year.

E. During this year, namely, the year ending 29-2-48, a profit of Rs. 14,97,347 had been fraudulently transferred to the Company from Allen Berry's joint venture business in disposal vehicles and stores (Ex. 496) and another profit of Rs. 12,09,000 had been transferred to it from Allen Berry's business in Drums and Pipelines (Ex. 739). In spite of these profits, besides others from the regular business of DCPM, the audited profit and loss account for this year showed a net profit of only Rs. 2,51,755 (Ex. 461). This profit was arrived at after adjustment of large items of expenses, interest payment and debts written off and also loss of Rs. 12,99,601 on sale of investments. This loss of 12,99,601 on sale of investments was shown as arising mainly out of the following items of profits and loss (Ex. 461):—

	Loss	Profit	Net Loss
	Rs.	Rs.	Rs.
On sale of investments	12,00,000	1,430	
On dealing in shares securities.. ..	1,19,321	16,999	
		2,031	
	13,19,321	20,460	12,98,861

The aforesaid loss of Rs. 12 lakhs on the sale of investments was shown as arising from the sale of 500 shares of Dharangdhara Trading Co. Limited (Ex. 589). The loss was claimed to have been sustained during the year ended 29th February 1948, but in May, 1948, Shri Shital Prasad Jain was still advising the DCPM Accountant, Rajkumar Lal Srivastava, that a sum of Rs. 59,500 was to be taken as dividend receipt in DCPM's accounts for the said year. He wrote as follows on the 12th May, 1948. (Ex. 368).

"You would see that DCPM, Dalmianagar is holding 500 shares of Dharangdhara Trading Co. Limited. Dividend for the year ended 30-6-1947 has been declared by the Company in their meeting held on 15th January, 1948, at Rs. 119 per share."

With this letter, Shital Prasad Jain also enclosed a copy of his letter already addressed by him to Dharangdhara Trading Co. Limited advising them that the dividend in question was to be credited to DCPM's account with them. This clearly shows that till 12th May, 1948, there had been no sale of the 500 shares of Dharangdhara Trading Co. by DCPM to Shri Shanti Prasad Jain.

F. Regarding the profit and loss account of Shanti Prasad Jain for the year ending 31-10-1948, it was pointed out by R. L. Srivastava (in his

letter to Shital Prasad Jain (Ex. 365/P. 269) that this account disclosed a sum of Rs. 3,381-2-0 only as dividend income in spite of the fact that his trial balance showed investments in Dharangdhara Trading Co. shares, jute and other shares. In this connection, it was explained that the Dharangdhara Trading Co. shares were purchased by him on 31-8-1948 and he was not aware whether the Company had declared any dividend.

As to the jute shares, he pointed out that these were purchased by him on 31-8-48 whereas the companies declared dividend on 14-6-1948 (Ex. 363). [In fact, Shanti Prasad Jain purchased 5,679 and 6,065 Ordinary Shares of Albion Jute Mills Ltd. and Lothian Jute Mills Limited from DCPM on 31-8-1948] (Ex. 240).

The above letter, does not bear any date but an endorsement on it shows that it was received at New Delhi on 28-2-49.

Thus till 28th February, 1949, the position was that the said Dharangdhara Trading shares were sold to Shri Shanti Prasad Jain on 31-8-48.

G. The earliest available document of DCPM, which indicates that the sale of 500 Dharangdhara Trading shares was effected on or before 29-2-48, is a Trial Balance of the Company's Dalmianagar Office as on that date. This shows a debit balance of Rs. 12 lakhs in the account of "loss on sale of investments". (Ex. 496).

The trial balance was commented upon by the New Delhi Office of DCPM on 3-3-1949 in a side note on the copy of the document as below :—

"Commented *vide* letter No. 3612, dated 3-3-1949".

H. R. L. Srivastava at Dalmianagar came to know from H. D. Bishnoi that Shital Prasad Jain was going to send a "contract in respect of loss for Rs. 2,34,375 on Allen Berry shares in the books for Dalmia Jain & Co. Limited for income-tax". He, therefore, requested Shital Prasad in a letter, dated 2/3rd March, 1949 (Ex. 363/P. 259) to send similarly a *contract* in respect of loss for Rs. 12 lakhs on 500 Dharangdhara Trading Co. shares "in the books of DCPM Head Office for the year ending 29-2-1948." In this connection, he furnished the particulars of the consideration for which these shares were previously bought and then sold so as to account for the loss of Rs. 12 lakhs and also the names of the seller and buyer.

Before proceeding further with the matter it will be necessary to deal, though briefly, with the loss of Rs. 2,34,375 on the Allen Berry shares referred to above (Ex. 363).

Dalmia Jain & Co. Limited had bought 75,000 ordinary shares of Allen Berry & Co. for Rs. 12,18,750. It purported to sell 37,500 shares out of these @Rs. 10 per share in the accounting year ending 31-1-1948 (*i.e.*, on 31-12-1947) at a loss of Rs. 2,34,375, and the balance of 37,500 shares at the same rate in the next accounting year (*i.e.* 31-8-1948) at a further loss of Rs. 2,34,375. The latter sale was made to Dalmia Investment Co. Ltd. through DCPM. The proceeds of the first sale were also received from DCPM but the accounts do not reveal the name of the buyer. There is evidence to show that this sale also purports to have been made to Dalmia Investment Co. Ltd. and that both these sales were covered by the contract on 31-12-47, though the proceeds of the second lot were credited in the Company's accounts on 31-8-1948.

The Profit and Loss Accounts, as standing in the books of Dalmia Jain & Co. Ltd. for the years ending 31-1-1948 and 31-1-1949 show respectively a net loss of Rs. 3,59,805 and net profit of Rs. 53,596 as below :—

	Year ending 31-1-1948	Year ending 31-1-1948
Total gross income from Managing Agency Commission, remuneration etc. from different companies.	6,72,938	10,98,758
Loss on sale of Allenberry shares	2,34,375	2,34,375
Other expenses and losses for the year	7,98,368	8,10,787
Net Profit or Loss for the year	3,59,805 (Loss)	53,596 (Profit)

It will thus be seen that the contract in respect of the loss on Allenberry shares referred to in R. L. Srivastava's letter was required to substantiate the loss in the purported shares sales charged to revenue and claimed as an allowable deduction on the Income-tax assessment of D. J. & Co. Ltd. So also the 'contract in respect of the loss for Rs. 12 lakhs, in Dharangdhara Trading Co. shares was asked for with a view to create evidence of the loss and obtain deduction thereof in the relevant income-tax assessment of D.C.P.M. The sale of 500 Dharangdhara Trading Co. shares to S. P. Jain was thus not, in fact, effected by D.C.P.M. on 29-2-1948, because the question of obtaining a contract relevant to this sale would not have arisen as late as 2-3-1949; and further because, in the letter received by Shital Prasad Jain at New Delhi Office of D.C.P.M. on 28-2-1949, he was clearly told by R. L. Srivastava that these shares were purchased by Shanti Prasad Jain on 31-8-1948.

I. Shri Shital Prasad Jain wrote back in March, 1949 to Shri R. L. Srivastava (letter dated 8th March, 1949) (Ex. 363) explaining that contracts were not made for loss or profit but for the purchase or sale of the shares. He, however, simultaneously furnished the contract for sale of 500 shares of Dharangdhara Co. Ltd. by D.C.P.M. and purchased by Shanti Prasad Jain. He also pointed out that the contracts for sale of 75,000 Allenberry shares by Dalmia Jain & Co. Limited to Dalmia Investment Co. Ltd. on 31-12-1947 had already been sent "the other day" in respect of both the seller and buyer companies. He moreover asked for detailed particulars of the dates, dates and names of sellers and purchasers in respect of the under-noted transactions as R. L. Srivastava might also require "contracts" for the same and that he would arrange to send such contracts "for completing the records once for all".

5,000 Ordinary shares Govan Brothers Ltd. ..	Sale from DCPM On 1-3-48 proba- to J. DALMIA. bly).
75,000 Ordinary shares Govan Brothers Ltd.	Sale from D.J. & In August/Sept- Co. Ltd.ember 1948 (probably).
150,000 Ordinary shares Allen Berry & Co. Ltd.	Sale from Bharat In July/August Collieries. 1948 (probably)

H. D. Bishnoi at Dalmianagar apprehended that the Income Tax Officer might raise questions "on what conditions the shares were purchased, how they were allocated and why these have been sold at a loss". Shital Prasad Jain at Delhi was, therefore, informed on 4/5-4-1949 that his views in this respect would be placed before the Income Tax Officer when at Dalmianagar and if the officer "still insisted on the objection," H. D. Bishnoi would write to him further in the matter. (Ex. 363).

J. It was only in March, 1949 that Shital Prasad Jain advised the Accountant at the Dalmianagar office to provide in the Company's accounts for the year ending 29-2-1948 for the brokerage of Rs. 250 paid by the Delhi Office to Harbans Singh Mehta & Co. in respect of the sale of 500 shares of Dharangdhara Trading Co. Limited. He enclosed the relevant debit advice dated 9-3-1949 for this amount debited in the account of the Dalmianagar Office.

In reply thereto dated 24/25-3-1949 (Ex. 363), Shri R. L. Srivastava confirmed having passed the necessary entries in D.C.P.M.'s closing period ending 29-2-1948 and also enclosed a corresponding credit advice dated 24-3-1949 for the New Delhi Office. Thus the 500 shares of Dharangdhara Trading Co. Limited which purported to have been sold by D.C.P.M. through the brokers, Harbans Singh Mehta & Co. and the contracts as supplied by them were forwarded by Shital Prasad Jain on 8-3-1949 to Dalmianagar.

The fact that the name of this broker was not mentioned in the letter dated 2/3rd March, 1949, when R. L. Srivastava furnished the relevant particulars of the sale to obtain "contract in respect of the loss" clearly indicates that the transaction was not, in fact, put through the said brokers. They were brought into the picture by Shital Prasad Jain simply with a view to obtaining "contracts" from them in respect of the transaction in order to create evidence in support thereof. Had the said transaction, in fact, been made on 29-2-1948, the question of passing necessary entries for payment of the brokerage by the Dalmianagar Office would not have been left over for more than a year till 10-3-1949.

Harbans Singh Mehta, Proprietor of Harbans Singh Mehta & Co., Share Brokers, New Delhi, stated before the Commission that, on his migration from West Pakistan after partition, he established his business in Delhi in the year 1948. He became a member of the Delhi Stock Exchange from 1-7-1948. (Ex. 581-B). He first stated that he did not maintain books of accounts etc. during the year 1948-49. On a further requisition from the Commission, he produced a transaction book showing details of the share transaction made from 1-7-1948, copies of Bought and Sold Notes issued from 2-7-1948 to 27-12-1949 and also those of the bills made from 8-1-1949 to 30-12-1949. No documentary evidence was made available by this Broker to show that 500 Dharangdhara Training Co. shares were, in fact, sold by him on account of D.C.P.M. on 29-2-1948 to Shanti Prasad Jain.

The following instances on the other hand indicate certain unusual features and anomalies revealed by the books maintained by the broker and produced before the Commission :—

(1) The transaction Book showed that this Broker bought 37,500 Ordinary shares of Allenberry from Dalmia Jain & Co. Ltd. and sold the same to Dalmia Investment Co. Ltd. at Rs. 10 per share on 3-8-1948. The relevant entries in the books appeared as the *last entries* of the said date at Folio 13 and were in different ink and handwriting. (Ex. 570). The book showed that no brokerage in respect of those purchases and sales was realised by the broker.

The copies of the Bought and Sold Notes produced by the Broker before the Commission indicated that all those were issued in the new Form

of the broker printed with his Delhi address therein. But the two Bought and Sold Notes relevant to the above transactions were the only exceptions which were issued in the old form printed with his Lahore address as a member of the Punjab Stock Exchange Ltd. there. The other three Bought and Sold Notes issued by the broker on the very same date (i.e., on 3-8-1949) and three such notes issued on the next day (after the issue of the aforesaid notes for the Allenberry shares) were also in the new Forms.

The books of Dalmia Jain & Co. Ltd. showed only one credit entry for sale of 37,500 ordinary shares of Allenberry to Dalmia Jain Investment Co. Limited in 1948, i.e., on 31-8-1948. Evidently, the two Bought and Sold Notes dated 3-8-1948, referred to above related to that sale, recorded by Dalmia Jain & Co. Limited. The Books of this Company also revealed only one sale of 37,500 Allenberry shares in 1947 (Ex. 325).

Shital Prasad Jain's letter dated 8th March, 1949 indicated that contracts (for both the buyer and seller) were supplied by him to R. L. Srivastava at Dalmianagar for sale of 75,000 *Allenberry shares* on 31-12-47 by the Dalmia Jain & Co. Limited to Dalmia Investment Co. Limited so that the aforesaid sale of 37,500 shares recorded in the books of the Dalmia Jain & Co. Limited on 31-8-1948 was already covered by these contracts, supplied to Dalmianagar between 2/3rd March, 1949 and 8th March, 1949 (Ex. 363).

(ii) The Transaction Book of Harbans Singh Mehta and Co. showed purchase of 75,000 ordinary Allenberry shares from Bharat Collieries Ltd. and the sale of the same to D.C.P.M. Limited at Rs. 10 per share on 1/2-7-1948. Prior to the production of the Transaction Books and other documents before the Commission, the Broker had stated that "on the basis of *transaction notes*" he found that the above transactions in Allenberry shares had been made on 1-7-1948. The relevant entries in the transaction books, however, appeared as the *last entries* of the dates 1/2-7-1948 at Folio 3 and are in different ink and handwriting. The transaction book showed that no brokerage was realised in respect of these transactions (Ex. 570).

Since these entries appeared after a number of other entries, some of which related to transactions on 2-7-1948, the purchases and sale of 75,000 Allenberry shares, according to the Broker's records, purported to have been effected on 2-7-1948 and not on 1-7-1948 (Ex. 570).

The Bought and Sold Notes relating to the sale of 75,000 shares were *not available* although the notes issued in respect of some of the other transactions of 2-7-1948 were available in the records made available to the Commission (Ex. 570).

It would thus appear from these unusual features and anomalies that the entries relating to the aforesaid transactions in Allenberry shares were interpolated in the Transaction Book and the relevant *contracts issued were fabricated by the Brokers* with a view to create evidence to support these purported transactions; also that, if the contracts relating to the sale of 500 Dharangdhra shares, which were supplied by Shital Prasad Jain along with his letter dated 8-3-1949 to Rajkumar Lal Srivastava, were issued by the Brokers, M/s. Harbans Singh Mehta, such contracts also were similarly fabricated by them to create evidence and were not issued in the normal course of business for any genuine transactions in these shares on 29-2-1948.

It has been mentioned earlier that there were specific instances to show that the accounts of the company were manipulated deliberately with a view to bring into existence artificial transactions in shares, which were never made in fact by merely passing necessary entries with *anterior dates* in the books of the purported buyers and sellers concerned; and that for such purported transactions of the company, the rates of the purchases and sales of shares used to be manipulated to suit the purposes of the D. J. Group and later R. Dalmia.

Shanti Prasad Jain and J. Dalmia are the only ones who have replied in detail to our Statements of Matters. The others have either not replied, or only raised technical objections or denied knowledge of and responsibility for the above transactions.

We will first deal with the antedating of the sale from 31-8-1948 to 29-2-1948. Shanti Prasad Jain said in his written statement,

"The Commission has alleged that the entries therein mentioned were made after 31st May, 1948 and fraudulently antedated. Shri Shanti Prasad Jain was neither responsible for nor concerned with D.C.P.M. from and after 31 May, 1948 and he is, therefore, not called upon to explain or elucidate the same."

These shares were acquired by Shanti Prasad Jain, as stated by him, both in his written statement and his oral evidence, as a result of a partition or dissolution of the D. J. Group. The case of Shanti Prasad Jain and J. Dalmia before the Commission is that the partition or dissolution took place on and from the 31st May, 1948 and, therefore, it follows that the sale of 500 shares of Dharangdhra Trading Co. could not have been effected before 31st May, 1948. In fact, Shanti Prasad Jain admitted this during the course of his oral evidence. He said,

"the entry of my purchase of Dharangdhra Trading Company's shares in my books is 31-8-1948".

Shri C. C. Shah, counsel for Shanti Prasad Jain, also, during the course of his arguments conceded the point so far as antedating was concerned. He, however, denied the allegation that the loss to D.C.P.M. on sale of the shares was a manipulated loss. He submitted that the fact was that D.C.P.M. suffered a loss of Rs. 12 lacs. Instead, however, of taking the loss in 1948-49, it thought it could take the loss in the year ending 29-2-1948.

The allegation of antedating included in this charge thus stands fully established.

Coming next to the allegation that there was sale at too low a rate, Shanti Prasad Jain has raised the following contentions in his written statement regarding this matter.

- (i) The purchase of shares by D.C.P.M. carried right to dividend whereas the subsequent sale by the company in 1948 was ex-dividend.
- (ii) When the shares were purchased, they were carrying dividend of Rs. 200 per share. As against this, dividend of Rs. 119 only per share was declared and paid in January 1948, that is, before the subsequent sale of the shares to Shanti Prasad Jain. This drop in dividend resulted in a fall in the price of shares of Dharangdhra Trading Co. Ltd.

- (iii) Dharangdhra Trading Co. Ltd., did not declare any dividend for the years ended June 1948 and 1949, so, if D.C.P.M. had not effected the sale of these shares in 1948, it would have had this investment without any yield for at least two years.
- (iv) The price index of variable dividend industrial securities came down to Rs. 167.54 in February 1948 and further to Rs. 138.10 in August 1948 as against Rs. 267.31 in June 1946, that is, about the time when Dharangdhra Trading Co. Ltd., shares were purchased by D.C.P.M. Such fall in price index was due to various events immediately following June/July 1946. There was therefore nothing abnormal about the fall in the value of Dharangdhra Trading Co. Ltd., shares at the time of their sale by D.C.P.M. According to Shanti Prasad Jain, such fall in the price of shares gets support from the fact that the market rate of Dharangdhra Chemical Co. Ltd., shares (of which Dharangdhra Trading Co. Ltd., was the selling agents) had also come down to Rs. 170 in February 1948 and further to Rs. 160 in August 1948 as against Rs. 403 in June 1946.

Most of the above contentions have no substance in them as will be seen from what follows.

These were the shares of a private company which at all material times was under the control of the D. J. Group and declaration or non-declaration of dividend which was within their own control, could not have affected the intrinsic value of the shares. The shares, as stated by Shanti Prasad Jain, were purchased in July 1946, i.e., after the declaration of dividend, for the year ended 30-6-1945, on 30-11-1945 and prior to the declaration of dividend for the year ended 30-6-1946.

But the position when the shares were subsequently sold out on 31st August 1948, i.e., after the declaration of dividend for the year ended 30-6-1947 and before the declaration of dividend for the year ended 30-6-1948 was similar. Thus, there was hardly any difference in the position between the two transactions and no question of purchase-cum-dividend and sale ex-dividend would arise.

As regards the fall in dividend on these shares from Rs. 200 to Rs. 119 between the date of purchase and the subsequent sale thereof, we are of the view that such fall—could not have affected the sale price. This is because the profit for the year immediately preceding the date of sale (that is, for the year ended 30-6-1948), was a bumper profit of Rs. 2,90,780 as compared to the profit of Rs. 1,76,943 in the year ended 30-6-1946 (Ex. 589) for which a dividend of Rs. 175 had been declared prior to the sale of these shares.

It may be mentioned here that although no dividend was declared for some reason or other, for the said year, i.e., year ended 30-6-1948 and also the year following, dividend was in fact declared again after this short interval and the rate of such dividend was again Rs. 200 per share, which is the same as that of the earlier years, viz., the years ended 30-6-1944 and 30-6-1945.

As already discussed, the accounts of the company were deliberately manipulated with a view to bring into existence artificial transactions in shares which, in fact, were never made, by merely passing necessary entries

with anterior dates in the books of purported buyers and sellers; and for such purported transactions of the company the rates of purchase and sales of shares used to be manipulated to suit the purposes of the D. J. Group or of R. Dalmia. The sale of the Dharangdhra Trading Co. shares were similarly manipulated, and in fact, H. D. Bishnoi at Dalmianagar had apprehended that the Income Tax Officer might raise questions about the conditions on which the shares were purchased, how they were allocated and in what circumstances they were sold at a loss.

The sale of Dharangdhra shares was, Shanti Prasad Jain has stated, made as a result of the dissolution of the D. J. Group. Further, the shares after their disposal by D.C.P.M. did not altogether pass out of the hands of the Group. They remained with Shanti Prasad Jain who later gifted them away to his nephews, the sons of Shriyans Prasad Jain.

It was not a normal trading or share dealing transaction but was part of the general plan of the group to reshuffle the shares with a view to bring about a re-organisation of the management of the companies under the control of the Group or at best to effect a separation of such control by stages.

In this context, the sale value of the shares cannot be determined or judged by reference to the market conditions. Even in the case of a normal trading or share dealing transaction, the sale value of the shares of a private limited company should depend primarily on its intrinsic value and there is nothing to indicate that the intrinsic value in the present case had changed since the date of the acquisition and by the time these shares were sold. Even assuming that there had been a change in the intrinsic value, for any reason, such change could not possibly justify a fall from Rs. 4,400 to Rs. 2,000 per share. The extra price paid at the time of the purchase of the shares can only be for the controlling interest attached to these shares and this controlling interest was obviously sold and transferred at the time of sale of these shares by D.C.P.M. to Shanti Prasad Jain.

It may be further mentioned here that the purchase of these 500 shares, according to Shanti Prasad Jain, formed part of a package deal in July 1946 for an overall price of Rs. 24 lacs. Out of this, Rs. 22 lacs was allocated as the price of these shares at a time when Shanti Prasad Jain was the Deputy Managing Director of D.C.P.M. It is, therefore, not open to him now to say that the allocation of Rs. 22 lacs towards the purchase price of these shares was not correct.

There is nothing to show that the fixation of the value at the time of purchase at Rs. 4,400 per share was incorrect and that the price of Rs. 2,000 per share at which the shares were transferred to Shanti Prasad Jain was fair and reasonable. As a matter of fact Shanti Prasad Jain in his evidence before the Commission stated that the rate at which these shares were transferred to him was fixed between the members of the Group. The question put to him by Shri C. C. Shah and his reply thereto in this regard are as under :

"Q. These shares were purchased by you at Rs. 2,000 per share. So that the prices were agreed to between you and the other members of the Group at the time of partition ?

A. Yes, between the members of the Group."

It follows that the transfer of these shares from D.C.P.M. to Shanti Prasad Jain was not at a proper rate but was at a rate arbitrarily fixed between the members of the Group with a view to create artificially a loss for reducing the profits for the year. Even if this loss may not work out exactly at Rs. 12 lacs, it would certainly be a substantial figure and since we are not computing the profits for Income-tax assessment, we need not go into further details as to the precise amount of this loss. The gain to D.C.P.M. sought to be made may be estimated at Rs. 4,82,813 approximately representing the amount of Income-tax intended to be evaded and the gain to the D. J. Group would be to the same extent.

As for responsibility, J. Dalmia ceased to be a director of D.C.P.M. with effect from 3rd November 1947 and since the impugned transaction, the sale at an arbitrarily fixed low rate, was effected on 31st August 1948, he cannot be held directly responsible except of course as a member of the Group.

Shanti Prasad Jain also ceased to be a director of the company from 1st November 1947 but since he was a party to the sale of the 500 Dharangdhara shares at an arbitrarily fixed low rate and in fact he acquired these shares, he cannot escape responsibility so far as the manipulation of the rate of sale of these shares was concerned. Further his responsibility for the transactions would also be here as a member of the Group.

As for R. Dalmia, the responsibility devolves on him for these transactions. Even though he was not a director of the company during this period, it is in evidence that he was in over-all control of the company throughout. Further, the benefit resulting from such transactions would have gone to the D. J. Group and ultimately to R. Dalmia as the sole beneficiary of the Company.

The Statements of Matters in respect of *this Section* were served on Shital Prasad Jain and R. L. Srivastava. Shital Prasad Jain has not cared to send any reply at all, while R. L. Srivastava has stated that so far as this section is concerned, he had not been co-opted director of the company for the year ended 29-2-1948 and that his signatures on the balance sheets were put after the persons mainly responsible had signed.

He has further added that the signing of the balance sheets was merely a routine matter. It has already been shown that Shital Prasad Jain and R. L. Srivastava arranged amongst themselves to obtain contracts for the sale of 500 shares of Dharangdhara shares at an arbitrarily low rate with a view to reduce the profits of the company for the year for income-tax purposes, so they cannot escape responsibility for assisting the Group to bring about this fraudulent manipulation of the accounts.

V. D. Agarwal, M. K. Roy, H. D. Bishnoi, Raizada Jagmohanlal and S. R. Srivastava, who as directors signed the balance sheets for the relevant year, cannot escape their responsibility for neglecting their duties as directors. The real responsibility would however be that of the D. J. Group and particularly R. Dalmia.

For the year ended 28-2-49 (Ex. 497) the accounts of D.C.P.M. were fraudulently manipulated with a view to create and charge to revenue fictitious losses aggregating Rs. 2,50,000 in share dealings and Rs. 14,40,165 on sale of investments as below. Such fraudulent manipulations resulted in a

reduction of the company's profits for the several years to the extent of the fictitious lossess :

Loss on sale of	Amount of loss	Date	Loss in share dealing
	Rs.		
(A) 50,000 Ord. National Bank of Lahore ..	2,50,000	31-12-48	Loss in share dealing
(B) 5,679 Ord. Albion Jute	2,14,485	31-8-48	
(C) 6,065 Ord. Lothian Jute	2,96,925	31-8-48	
(D) 36,255 Ord. Bharat Collieries	57,482	31-8-48	
(E) 29,074 Ord. Dheri Rohtas Light Railway ..	41,551	30-6-48	
		& 31-7-48	Loss in sale of investments
(F) 2,270 Pref. Rohtas Industries	41,759	31-7-48	
(G) 111,917 Ord. Rohtas Industries	4,49,195	31-7-48	
(H) 11,150 Ord. Bharat Bank Ltd., (Fully paid up)	55,336	31-7-48	
(I) 50,180 Ord. Bharat Bank Ltd., (Rs. 2 8 0 paid up)	70,444	31-7-48	
(J) 73,900 Defd. Dalmia Cement	2,12,988	31-8-48	
	14,40,165		
TOTAL LOSS	19,90,165		

The fraudulent manipulation of accounts was effected as follows :

(a) In item 'A' above, artificial transactions in purchase of the shares at a higher rate and subsequent sale thereof at a lower rate was brought into existence by recording necessary entries in the accounts of D.C.P.M. to create a fictitious loss; and

(b) In items (B) to (J) above, sales of the shares were deliberately shown in the accounts of D.C.P.M. at rates far below their cost price in the hands of the company.

The object was to artificially reduce the profits of D.C.P.M. for the year ending 28-2-49 with a view to evade proper incidence of income tax.

In this year, a profit of Rs. 10,25,000 was fraudulently transferred to D.C.P.M. from Allenberry's business in Drums and Pipelines. We have examined this in Volume 4, part 2. (Exs. 461 & 739).

In spite of this profit, besides other profits from the regular business of D.C.P.M., its audited profit and loss account for this year showed a net loss of Rs. 4,41,449 (Ex. 497). This loss was arrived at after adjustment of big items of expenses, interest payment and also a net "loss in sale of investments" of Rs. 18,60,419. This loss of Rs. 18,60,419 is made up of,

	Loss	Profit	Net loss
	Rs.	Rs.	Rs.
On sale of investment	14,74,221	89,489	—
On sale of securities	295	—	—
On dealing in shares	4,78,001	2,609	—
	19,52,517	92,098	18,60,419

(Ex. 240)

The above loss on investments of Rs. 18,60,419 includes mainly the following :

	Rs.
(a) On item of loss in share dealing	2,50,000
(b) Nine major items of losses in sale of investments	14,52,618
	17,02,618

As regards (a) namely, loss in share dealing, it was shown as representing the difference in price paid on settlement of two transactions in purchase and subsequent sale of 50,000 shares of National Bank of Lahore @ Rs. 9 and Rs. 4 per share respectively. (Ex. 240).

As regards (b), namely, losses in sale of investments, these were shown as having been sustained in shares of Albion Jute, Lothian Jute, Bharat Collieries, Dehri Rohtas Light Railway, Rohtas Industries, Bharat Bank and Dalmia Cement. All these concerns were under the same control at the relevant time. (Ex. 240).

As for loss in share dealings, a transaction in purchase of 50,000 shares of the National Bank of Lahore Ltd., at Rs. 9 per share from Jhabarmal Chokhani of Todarmal Road, New Delhi purports to have been made by D.C.P.M. on 16-3-48. The delivery, as per contract, was to be taken against payments within two months of the sale date. These shares were then purported to be resold by the company at Rs. 4 per share to Jhabarmal Chokhani on 3-12-48. (Ex. 240).

There was no delivery against the above purported transactions, and they were adjusted on 31-12-48. This resulted in a difference payment of Rs. 2,50,000 by D.C.P.M. thereby entailing a loss in share dealing during the account year ending 28-2-48. (Ex. 240).

The books of account and other relevant subsidiary records of D.C.P.M. were not available to the Commission. The only documents, besides the books of accounts, which the company had to substantiate the transactions, and which were made available to the Inspectors appointed under the Indian Companies Act, were as below :

- (a) A letter dated 16-3-48 received by the company from Jhabarmal Chokhani confirming the sale of the shares as above on the express condition that delivery was to be taken against payments within *two months*. (Ex. 240).
- (b) A second letter dated 3-12-48 received from the seller confirming that the share previously sold were re-purchased as aforesaid on the company's failure to take delivery till then. The condition governing this transaction was that the company could pay the difference of Rs. 2,50,000 on adjustment and settlement of both the transactions. (Ex. 240).
- (c) A third letter dated 31-12-48 from Jhabarmal Chokhani in acknowledgement of his receipt of the difference of Rs. 2,50,000 on final settlement. (Ex. 240).

The aforesaid two letters dated 16-3-48 and 3-12-48 (which constitute the purported contracts between the two parties for the purchase and the sale) are unstamped though the value of shares involved was very substantial.

These letters were written in a prefatory manner on plain sheets of paper. There is no indication of any acceptance or confirmation from the other party, namely, D.C.P.M.

As regards the entries in the financial books of D.C.P.M., debit in the account styled 'loss on dealing in shares' was raised for the difference of Rs. 2,50,000 on 31-12-48, with a corresponding credit for the amount in the account of Jhabarmal Chokhani under the following narrations :

"Being the amount paid on account of loss on dealing in 50,000 shares of National Bank of Lahore Ltd., purchased from Shri Jhabarmal Chokhani on 16-3-48 at Rs. 9 per share and sold to him back on 3-12-48 at Rs. 4 per share adjusted."

The account of Jhabarmal Chokhani stood as below in the personal ledger of the New Delhi office of D.C.P.M.

	Debit	Credit
18-8-48 To cheque 5,33,439	15,000	
13-12-48 To amount paid by Cheque No. 301579	2,00,000	
31-12-48 To amount paid by cash	35,000	2,50,000
31-12-48 By loss in dealing in shares		
	2,50,000	2,50,000

(Ex. 240)

The above account shows that the payment to the seller commenced on 18-8-48 although the shares were resold to him on 3-12-48 and the two transactions were adjusted and settled still later, i.e., on 31-12-48. Although the sale contract on 16-3-1948 was not executed within the stipulated period (i.e., by 15-5-1948), the transaction was neither adjusted and settled forthwith by entering into a contract for resale and consequential exchange of difference in price, nor was it renewed for a further period. There could have been thus no occasion for any payment of Jhabarmal Chokhani till the date of the next transaction on 3-12-48.

In spite of this, there was a payment of Rs. 15,000 to the seller on 18-8-1948, that is, more than 3 months after its default on 15-5-48. Such payment was not in the nature of part consideration "against value of shares" purchased, because—

- there had not been any delivery of the shares against the purported transaction till the date of their resale; and
- the payment was debited to the personal account of Jhabarmal Chokhani and not in the relevant shares account.

On the other hand, the above payment of Rs. 15,000 later on constituted a part of the difference payment of Rs. 2,50,000 finally made to Jhabarmal Chokhani on adjustment of the purported transactions made on 16-3-48 and 3-12-48. It would thus be apparent that the payment of Rs. 15,000 was really in the nature of an advance made against the profits predetermined nearly 4 months ahead of the date on which the profit was purported to have been earned by Jhabarmal Chokhani. Entries in regard to the alleged transactions in shares and the relevant contracts letters were brought into existence thereafter to substantiate an alleged loss. (Ex. 240).

As discussed earlier, there were specific instances which indicated that the accounts of the company were deliberately manipulated with a view to

bring into existence artificial transactions in shares, which in fact were never made, by merely passing the necessary entries with anterior dates in the books of the purported buyers and sellers concerned and for such purported transactions of the company the rates of purchases and sales of shares and used to be manipulated to suit the purposes of the D. J. Group and later R. Dalmia.

In this case, all through the relevant period that is, from the date of the purchase to the date of the subsequent sale to cover up the earlier transactions, D.C.P.M. had the means and the funds to take delivery of 50,000 shares of National Bank of Lahore worth Rs. 4,50,000, if, in fact, purchased. Although D.C.P.M. purported to have covered up its earlier purchase transaction by effecting a resale of the share at Rs. 4 per share on 3-12-1948 (because of its purported failure to take delivery), it acquired within a short period thereafter bigger lots of these shares from other parties as below :—(Ex. 240).

Date of purchase				No. of shares of National Bank of Lahore	Rate per share	From whom purchased	
28-2-1949	..	..	..	25,000	Rs. 3	Rashtriya Investment Limited.	
30-4-1949	..	..	..	31,000	3	Rashtriya Financial Corporation.	
				56,000			

D.C.P.M. acquired further 55,672 shares of National Bank of Lahore at a much *higher rate of Rs. 7 per share* on 19-1-1951 from National Investment Trust Limited. All these shares acquired as above were held by the Company till at least the end of its financial year 1950-51.

As for Jhabarmal Chokhani, the vendor, he is a near relation of G. L. Chokhani, the Agent and Manager of the Bombay office of D.C.P.M. The purported share transaction of D.C.P.M. and the difference payment therefor do not admit of any verification in the absence of the relevant accounts and subsidiary records, including the daily share Transaction Books, and Contracts and Confirmation Memos of Jhabarmal Chokhani. These were not produced by him before the Commission.

According to him, his contract dated 16-3-48 for sale of 50,000 shares of National Bank of Lahore to D.C.P.M. was made against the stock of 60,590 shares held at the relevant time. He furnished particulars in support of the purchases of 60,590 shares during 5-1-43 to 27-2-47 but none whatsoever regarding his sales thereof during the said period and thereafter up to 15-3-48. It is thus not known whether in fact he did possess, and was in a position to deliver 50,000 shares when the purported sale contract was made or thereafter. (See his letters to the Commission Ex. 580, dated 4-5-59, and Ex. 582, dated 23-11-59).

According to him, although the exact dates of the receipt are not known, the sum of Rs. 2,50,000 was received by him from D.C.P.M. 'during the end of 1948'. To his recollection, the sum of Rs. 2,50,000 was received in cash. As against this, the entries in D.C.P.M.'s Books as

produced before the Inspector D. P. Khosla & Co. showed the first two payments by cheques on 18-8-48 and 13-12-48. Only the balance of Rs. 35,000 was paid in cash, on 31-12-48. (Ex. 240).

As to how the sum of Rs. 2,50,000 received from D.C.P.M. was dealt with, Jhabarmal Chokhani vaguely stated that the money was 'mostly utilised for personal expenses' and that 'partly some loans were given which could not be recovered' (Ex. 240).

J. Dalmia and Shanti Prasad Jain have given exactly the same replies in their written statements while dealing with this matter. They have stated—

- (i) they were neither responsible for nor concerned with D.C.P.M. from and after 31st May 1948;
- (ii) they were not called upon to explain or elucidate in respect of loss on sale of 50,000 ordinary shares in National Bank of Lahore Ltd., as they were neither concerned with nor aware of the purchase of these shares by D.C.P.M. in March 1948. They were not the directors of D.C.P.M. in March 1948. Any such transaction might have been made under the authority of directors of D.C.P.M. in the normal course of its business.

Apart from raising the above general objections, both Shanti Prasad Jain and J. Dalmia also replied on merits. This, they say, they had done with a view to point out that the assumptions and insinuations made by the Commission were not necessarily correct and justified.

They said,

- (i) No adverse inference could be drawn from the fact of payment of Rs. 15,000 by D.C.P.M. to J. Chokhani on 18-8-48 subsequently deducted from the amount of difference becoming due to him by D.C.P.M. on the final settlement of the transaction on these shares in December 1948;
- (ii) "No adverse inference should have been reasonably drawn from the fact that the sum of Rs. 15,000 paid by D.C.P.M. to J. Chokhani was not debited to relevant share accounts, which, it appears, could not in fact have been done as the payment seems to have been only in the nature of advances, or on account payment and/or treating the subsequent adjustment of his payment out of the difference of Rs. 2,50,000 becoming payable to J. Chokhani by D.C.P.M. as an advance payment and predetermined profits, as alleged therein";
- (iii) It was not correct to assume that the transaction of D.C.P.M. purchasing these shares on 16-3-48 would have stood vacated on 15-5-48 without ascertaining why and how it was agreed to be carried forward;
- (iv) Subsequent purchase of another lot of 56,000 shares in National Bank of Lahore Ltd., at Rs. 3 per share proved that D.C.P.M. did want to invest and hold about 50,000 shares of National Bank of Lahore Ltd., D.C.P.M. by settling its earlier purchase from Chokhani by resale to him at Rs. 4 per share effected purchase of similar share shortly thereafter at a lower price of Rs. 3 per share. The purchase of another lot about two years

later in January 1951 at a higher price had no relevance as position of the said bank and the market conditions might have been very different after such a long period.

Taking up the general objections raised by Shanti Prasad Jain and J. Dalmia first, the purchase of shares was made in March 1948, that is, before the 31st May 1948. It is not the case of Shanti Prasad Jain and J. Dalmia that the transaction was not entered into by D.C.P.M. They were connected with D.C.P.M. even according to their own version, up to at least the 31st May 1948. The overall policy of purchase and sale of shares was controlled by the D. J. Group of which Shanti Prasad Jain and J. Dalmia were also important members. A large block of shares consisting of 50,000 shares in the National Bank of Lahore could not have been purchased by the 'directors' in the normal course of D.C.P.M.'s business without the prior instructions of the D. J. Group. Obviously, the purchase of these shares, if made in March 1948, could have been done only with the consent of the D. J. Group.

The other contentions raised on the merits by Shanti Prasad Jain and J. Dalmia are discussed as below :

- (i) The payment to Chokhani in August 1948 could not be a regular payment. Any amount payable to a vendor for difference becomes due only after the parties have agreed to finally adjust a transaction one way or the other. The narration in the vouchers and the contents of the subsequent letters written by Chokhani clearly show that the transaction was struck off only on 3-12-48. It would thus mean that a part of the profit which Chokhani was *made* to earn was paid to him nearly four months ahead of the date on which he was deemed to have earned it.
- (ii) The non-debiting of the payment to vendor of Rs. 15,000 to the share account could only mean that this payment to Chokhani was on account of dealings in shares. This payment of Rs. 15,000 could not have been treated in the nature of advances or on account payment before the transaction was settled.
- (iii) Shanti Prasad Jain and J. Dalmia have stated that it was not correct to assume that the transaction of D.C.P.M. on 16-3-48 stood vacated on 15-5-1948 (after the expiry of two months mentioned in the letter from Chokhani) without first ascertaining why and how it was agreed to be carried forward. The period mentioned in the alleged contract expired on 15-5-1948, that is, before 31-5-1948, and both Shanti Prasad Jain and J. Dalmia even now have not clarified in their written statements or otherwise, the circumstances under which the transaction in question was allowed to be carried forward. Accordingly, in the absence of any explanation to the contrary, specially when the fact pertaining to this transaction covering a large block of shares would have been within their special knowledge, the assumption referred to above stands unrefuted.
- (iv) The subsequent purchases of shares of the National Bank of Lahore at Rs. 3 per share from Rashtriya Investment Limited and Rashtriya Finance Corporation Limited on 28-2-49 and 30-4-49 respectively were from the allied concerns under the

same control. As discussed earlier, the accounts of the companies under the control of the D. J. Group were fraudulently manipulated with a view to bring into existence artificial transactions and for such purported transactions the rates of purchases and sales of shares used to be manipulated to suit the purposes of the D. J. Group. These purchases of shares at Rs. 3 per share from the allied concerns were similarly manipulated and cannot be said to prove that the sale of shares of National Bank of Lahore back to Chokhani at Rs. 4 per share was at a 'proper' rate. On the other hand, the purchase of these shares at Rs. 7 per share in 1951 from National Investment Trust Limited clearly shows that the resale at Rs. 4 per share was at a low figure.

Thus the alleged transaction with Chokhani resulting in a loss of Rs. 2,50,000 to D.C.P.M. on sale of 50,000 shares of National Bank of Lahore Limited was an artificial transaction which was brought into existence by recording necessary entries in the accounts of D.C.P.M. to create a fictitious loss. The object was to artificially reduce the profits of D.C.P.M. for the year ending 28-2-48 with a view to evade proper incidence of income-tax.

Dealing next with items (b) to (j) relating to losses aggregating Rs. 14,40,165 on sales of investments, the sales in all these cases were to Shanti Prasad Jain, J. Dalmia and Bharat Collieries Limited, that is, to the members of the D. J. Group or their concerns. The details of the sales are as under :—[Ex. 240].

			Rs.		
(B) Albion Jute Mills Ltd., Ordinary shares of Rs. 100 each					
Purchased	5,679 shares prior to 1-3-1948 @Rs. 44 per share.	T.V.	25,21,874	5	0
Sold	2,100 shares u/d 30-6-1948 to Seth Shanti Prasad Jain @Rs. 400 per share.	T.V.	8,40,000	0	0
Sold	3,579 shares u/d 31-8-1948 to Seth Shanti Prasad Jain @Rs. 410 per share.	T.V.	14,67,390	0	0
Loss on 5,679 shares @ Rs. 37-12-0 per share			2,14,485	5	0
(C) Lothian Jute Mills Limited, Ordinary shares of Rs. 100 each					
Purchased	6,065 shares prior to 1-3-1948 @ Rs. 614 per share.	T.V.	37,23,650	3	0
Sold	6,065 shares u/d 31-8-48 to Seth Shanti Prasad Jain @ Rs. 565.		34,26,725	0	0
Loss on 6,065 shares @ Rs. 49 per share ..			2,96,925	3	0
(D) Bharat Collieries Limited, Ordinary shares of Rs. 10 each					
Purchased	35,855 shares prior to 1-3-48 @ Rs. 12/10 per share	T.V.	4,51,868	5	4
Purchased	100 shares u/d 11-5-48 from Birdhi Chand Bagla & Co. Stock & Share Brokers @ Rs. 11 per share.	T.V.	1,106	4	0
Purchased	100 shares u/d 4-12-48 from Birdhi Chand Bagla & Co. Stock & Share Brokers @ Rs. 11 per share.	T.V.	1,100	0	0
Purchased	200 shares u/d 31-12-48 from Birdi Chand Bagla & Co. Stock and Share Brokers @ Rs. 11 per share.	T.V.	2,212	8	0
			4,56,287	1	4

			Rs.		
Sold	36,255 shares u/d 31-8-48 to Seth Shanti Prasad Jain @ Rs. 11 per share.	T.V.	3,98,805	0	0
	Loss on 36,255 shares @ Rs. 1/9/6 per share (Approx.).		57,482	1	4
(E) <i>Dehri Rohtas Light Railway Company Ltd., Ordinary shares of Rs. 10 each</i>					
Purchased	29,074 shares prior to 1-3-48 @ Rs. 11/12 per share.	T.V.	3,40,442	12	0
Sold	8,152 shares u/d 30-6-48 to Seth Shanti Prasad Jain @ Rs. 11 per share.		89,672	0	0
Sold	20,922 shares u/d 31-7-1948 to Bharat Collieries @ Rs. 10 per share.	T.V.	2,09,220	0	0
			2,98,892	0	0
	Loss on 29,074 shares @Rs. 1/7 per share (Approx.).		41,550	12	0
(F) <i>Rohtas Industries Limited, Preference shares</i>					
Purchased	2,270 shares prior to 1-3-48 @ Rs. 138/8 per share.	T.V.	3,14,150	5	0
Sold	2,270 shares to Bharat Collieries Ltd., Dalmianagar, @Rs. 120 per share.		2,72,400	0	0
	Loss on 2,270 shares @Rs. 18/8 per share		41,759	5	0
(G) <i>Rohtas Industries Limited, Ordinary shares of Rs. 10 each</i>					
Purchased	111,917 shares prior to 1-3-48 @Rs. 18/12 per share.	T.V.	15,68,365	8	0
Sold	111,917 shares u/d 31-7-48 to Bharat Collieries Ltd., Dalmianagar @Rs. 10 per share.		11,19,170	0	0
	Loss on 111,917 shares @ Rs. 4/2		4,49,195	4	0
(H) <i>Bharat Bank Limited, Ordinary shares of Rs. 10 each Fully Paid up</i>					
Purchased	11,150 shares prior to 1-3-48 @Rs. 9/15 per share.	T.V.	1,11,086	4	0
Sold	11,150 shares to Bharat Collieries Ltd., Dalmianagar @Rs. 5 per share.	T.V.	55,750	0	0
	Loss on 11,150 shares @Rs. 4/15 per share		55,336	4	0
(I) <i>Bharat Bank Ltd., Ordinary shares of Rs. 10 each Rs. 2-8-0 Paid Up</i>					
Purchased	50,180 shares prior to 1-3-48 @Rs. 2/6/6/ per share.	T.V.	1,20,624	1	0
Sold	50,180 shares u/d 31-7-48 to Bharat Collieries Ltd., Dalmianagar, @Rs. 1 per share.	T.V.	50,180	0	0
	Loss on 50,180 shares. @Rs. 1/6/6/ per share		70,444	1	0
(J) <i>Dalmia Cement Ltd., Deferred shares of Re. 1 each</i>					
Purchased	73,900 shares prior to 1-3-48 @ Rs. 4/14 per share.	T.V.	3,60,787	8	0
Sold	3,900 shares u/d 31-7-48 to Seth J. Dalmia @Rs. 2 per share.		7,800	0	0
Sold	70,000 shares u/d 31-8-48 to Seth J. Dalmia @Rs. 2 per share.		1,40,000	0	0
	Loss on 73,900 shares @Rs. 2/14 per share		2,12,987	8	0

(Ex. 240)

All the companies except Bharat Bank, whose shares were sold as above, were regularly paying dividend on their ordinary shares till about the time of the sales of the D.C.P.M. shares and even thereafter in many cases. All these companies were also under the effective control of the D. J. Group at the material time. In most of these cases the sale considerations were debited in the relevant personal accounts and were not received in cash.

These shares after their disposal by D.C.P.M. did not altogether pass out of the hands of the D. J. Group.

The purchases of Shanti Prasad Jain are mentioned in cases B, C, D and E above. These purchases (of 56,151 shares in all) except only 2,000 ordinary Bharat Collieries shares were again sold out by him immediately or shortly after the purchases. These purchases are set out in Appendix A attached hereto. See also Shanti Prasad Jain's letter, dated 9-5-1959 to the Commission. [Ex. 581.]

The corresponding sales were *at cost* except in the cases of 34,255 ordinary shares of Bharat Collieries and 8,152 ordinary Dehri Rohtas shares. These were sold at a loss of Re. 1 per share. All these shares purchased by Bharat Collieries Ltd. (as mentioned in cases E, F, G, H and I above) were held by the Company till the middle of 1950. The details are set out in Appendix A and in the company's letter, dated 16-2-59 (Ex. 579) to the Commission. These shares were thereafter sold out *at cost*.

In none of the corresponding sales of these shares by Shanti Prasad Jain and the Bharat Collieries Ltd. were the names of the buyers furnished to the Commission on the plea that their affairs were not under investigation by the Commission. Also the relevant books of accounts and vouchers of Shanti Prasad Jain and the Bharat Collieries Limited were not produced before the Commission in support of their purchase from D.C.P.M. and the subsequent corresponding sale thereof, although these were specifically called for. It appears that all these shares continued to be held by one or the other of the allied concerns.

The entire block of the Dalmia Cement shares bought by J. Dalmia was held by him till the middle of 1950. For details see Appendix A attached hereto and J. Dalmia's letter to the Commission, dated 28-1-59. (Ex. 578). These shares were thereafter sold out by him *at cost* to Cement Distributors Limited, another allied concern.

All these companies continued to be under the same effective control after D.C.P.M.'s disposal of its holdings in the hands of the buyers, namely, Shanti Prasad Jain, Bharat Collieries Ltd. and J. Dalmia. Thus all these sale transactions of D.C.P.M. (and also those of the buyers thereafter) were, in fact, in the nature of *reshuffling* of the holdings in several controlled companies of the D. J. Group in the hands of its members and associate concerns *inter se*.

The accounts of the Companies, as discussed earlier, used to be manipulated deliberately with a view to bring into existence artificial transactions in shares, which were never made, by merely passing necessary entries with *anterior dates* in the books of the purported buyers and sellers concerned and for such purported transactions the rates of the purchases and the sales of shares used to be manipulated to suit the purposes of the D. J. Group. Here also the *reshuffling inter se* of the holdings of the members was done at *mutually agreed* 'low rates' which resulted in the creation of artificial losses in the hands of D.C.P.M. These losses fraudulently manipulated were utilised as a set-off against the profits of the company for this year with a view to evade the proper incidence of income-tax payable by the company.

Shanti Prasad Jain and J. Dalmia have furnished practically the same reply while dealing with this matter in their written statements. Apart from

raising the usual general objections raised while replying to other matters, namely, dissolution of the D. J. Group with effect from the 31st May, 1948 and consequently their not being concerned with the affairs of D.C.P.M. subsequent to that date, they have also raised the following further contentions on the merits :

- (i) The sales resulted in a loss to D.C.P.M.^c because these shares were purchased by D.C.P.M. at higher prices when the ruling market prices for these shares were high. On account of pre-partition disturbances and post-partition problems, the average prices of shares came down to one-half generally. In that context, the loss incurred in these shares by D.C.P.M. should be deemed to be rather small compared to the general loss on the Stock Exchange during the relevant period.
- (ii) The prices at which these shares were sold by D.C.P.M. were not lower than ruling market prices on the relevant dates, but, on the other hand, were rather higher than ruling market prices. There were no artificial transactions in purchases of these shares at higher rates and their subsequent sales at lower rates.

These shares were of the companies under the control of the D. J. Group and constituted controlling blocks of shares or something near to it, of the companies concerned. When these shares were purchased by D.C.M.P., the price for the element of the controlling interest attached to these shares was also included in the purchase price. Similarly, when the sale of these shares was effected, the controlling interest was also sold and transferred. So, if the element of the controlling interest is taken into consideration, the rates at which the sales were effected, even though higher than the market rates, could not be considered as fair and reasonable. We have also seen that even market quotation of the shares used to be manipulated.

∴ The sales of the shares under discussion were not made to outsiders but were effected with a view to achieve reshuffling of holdings of these concerns among the members of the D. J. Group *inter se*. In fact, when these shares were being transferred, the rates were agreed to and fixed between the members of the Group. In this connection we may reproduce here what Shanti Prasad Jain stated in his written statement—

“The sales were effected by D.C.P.M. on dissolution of the D. J. Group The prices at which these shares in various companies were sold by D.C.P.M. to Shanti Prasad Jain, J. Dalmia and Bharat Collieries Ltd., were agreed to by and between the parties concerned and the prices so fixed were not to the disadvantage of D.C.P.M. but were in fact, generally higher than pulling market prices.”

Further during the course of his examination-in-chief by Shri C. C. Shah, he stated:

- “Q. Please turn to page 15 of the Statement of Matters. In the last column it is mentioned “some of these shares were sold to you, some to J. Dalmia and some to Bharat Collieries.” Would you kindly say how you came to purchase the shares of your company, Bharat Collieries ?

- A. Shares listed at page 15 had been purchased by Shanti Prasad, J. Dalmia, Bharat Collieries, as a result of the partition between three of us.....
- Q. Would you kindly tell us briefly that when this partition was agreed to and the sale of shares from one to the other, you also fixed prices, the shares should be sold by the one to the other?
- A. Yes, sir."

This shows that the sales of these shares were, even according to Shanti Prasad Jain and J. Dalmia, as a "result of partition" for "reshuffling" the holdings and "at rates agreed to by and between the parties concerned". It, therefore, follows that when these shares were being transferred, no notice would have been taken of the ruling market prices and that the rates were fixed by the members of the Group arbitrarily at prices that could benefit them mutually.

A similar contention was raised by Shanti Prasad Jain in connection with the transactions that we have dealt with relating to the account year ending 29-2-48. We have dealt with that at length and, for the reasons stated earlier, we hold that there is no substance in this contention.

It follows that the rates at which the sales of shares were effected by D.C.P.M. which resulted in heavy losses, were deliberately manipulated for extraneous considerations, namely, creation of losses as a set off against the profits of the company for the year. The gain sought to be made by D.C.P.M. may be estimated at Rs. 6,80,027 (approximately) representing the amount of income-tax that would otherwise have been payable by the company; and the gain to the D. J. Group and R. Dalmia would be to the same extent.

As for responsibility, both J. Dalmia and Shanti Prasad Jain ceased to be directors of D.C.P.M. with effect from 3-11-47 and 1-11-47 respectively. So they cannot be held directly responsible for the impugned transaction, namely, sales at arbitrarily fixed low rate, except of course as members of the D. J. Group. Since, however, both J. Dalmia and Shanti Prasad Jain were parties to a number of the transactions in that J. Dalmia himself purchased the shares of Dalmia Cement Ltd., and Shanti Prasad Jain himself purchased the shares of Albion Jute, Lothian Jute and Bharat Collieries, they cannot escape their responsibility for the manipulation of the transactions.

As for R. Dalmia, he is also responsible since it is in evidence that he was in overall control of the company throughout even though he was not a director of the company during the period. Further, the benefit resulting from the transactions would have gone to the D. J. Group and ultimately to R. Dalmia as the sole beneficiary of the company.

Of the persons on whom the Statements of Matters in regard to this Section were served, R. Dalmia, Shital Prasad Jain, Shriyan's Prasad Jain and V. D. Agarwal have not sent any reply. M. K. Roy has replied raising legal and technical objections. J. M. Raizada in his reply has submitted that since he was appointed a director only on 15-1-1949, he claimed complete ignorance in the matter.

M. K. Roy, J. M. Raizada and V. D. Agarwal who signed the balance sheets as directors cannot escape their responsibility for neglecting their duties as directors. The real responsibility, however, would be that of the D. J. Group and particularly R. Dalmia.

APPENDIX A

Name of the Buyer of Shares from D.C.P.M.	Purchases from D.C.P.M.			Corresponding Sales		
	Shares	No.	Date of Purchase	Rate Rs.	No.	Date of Sale
1. <i>Shant Prasad Jain</i>	Albion Jute	2,100	30-6-1948	400	2,100	31-8-1948
		3,579	31-8-1948	410	3,579	31-8-1948
	Lothian Jute	6,065	31-8-1948	565	{ 4,065	31-8-1948
					{ 2,000	31-12-1948
	Bharat Collieries	36,255	31-8-1948	11	{ 34,255	30-12-1948
					{ 2,000	7-3-1952
	Dehri Rohtas Light Rly. Co.	8,152	30-6-1948	11	8,152	30-12-1948
2. <i>Bharat Collieries Ltd.</i> ..	Dehri Rohtas Light Rly. Co.	20,922	31-7-1948	10	20,922	30-6-1950
(Ex. 579)	Rohtas Industries Ltd.	2,315	31-7-1948	120	2,315	30-6-1950
		12,357	31-7-1948	10	{ 1,12,357	30-6-1950
	Bharat Bank ..	11,150	31-7-1948	5	{ 1,150	30-6-1950
					{ 10,000	31-7-1950
		50,180	31-7-1948	1	50,180	31-7-1950
3. <i>Jai Daval Dalmia</i>	Dalmia Cement Ltd.—Defd.	3,900	31-7-1948	2	{ 73,900*	21-6-1950
(Ex. 578)		70,000	31-8-1948	2	{	21-6-1950
					*Sold to Cement Distributors Ltd.	

The accounts of D.C.P.M. for the year ending 28-2-1950 were fraudulently manipulated with a view to create and charge to its revenue fictitious losses aggregating Rs. 2,72,118 on the sale of investments as below (Ex. 237). These fraudulent manipulations resulted in a reduction of the Company's profits for the year to the extent of the fictitious losses.

Loss on sale of	Amount of Loss	Date of sales
	Rs.	
(a) 15,000 Pref. shares of Allenberry & Co. (of Rs. 10 each).	1,05,000	13-5-1949
(b) 2,909 Ord. shares of Bhart Insurance Co. Ltd., (of Rs. 100 each).	1,67,118	<div style="display: inline-block; vertical-align: middle;"> <div style="display: inline-block; vertical-align: middle;"> 16-2-1950 23-2-1950 26-2-1950 28-2-1950 </div> </div>
	2,72,118	(Ex. 240)

The fraudulent manipulations of accounts were effected by deliberately showing the above shares in the account of D.C.P.M. as having been sold at rates far below their cost price in the hands of the company.

The object was to reduce artificially the profits of D.C.P.M. for the year ending 28-2-1950 with a view to evade the proper incidence of income-tax payable by the company.

During this year a profit of Rs. 10 lacs was fraudulently transferred to D.C.P.M. from Allenberry's business in Drums and Pipelines (Exs. 237 and 739). In spite of this profit, besides others from the regular business of D.C.P.M., its audited profit and loss account for this year showed a net profit of only Rs. 85,518 (Ex. 237). This profit was arrived at after adjustment of large items of expenses, interest payment, compensation payment of Rs. 7 lacs to the employee Shriyans Prasad Jain for the purported loss of his office during the year and also a loss of Rs. 4,86,833 'in sale of investments'. The said loss in sale of investments is made up of—

	Loss	Profit	Net Loss
	Rs.	Rs.	
One sale of investments	2,82,945	863	
One sale of Securities	1,95,477	—	(Ex. 501)
One dealing in shares	9,394	120	
	4,87,816	983	4,86,833

The aforesaid loss of Rs. 2,82,945 on sale of investments included two large items of losses aggregating Rs. 2,72,118 sustained in preference shares of Allenberry and ordinary shares of Bharat Insurance. The details of the purchases and sales of the shares are as under : (Exs. 240 & 501).

A. Allenberry & Co. Ltd., Preference shares of Rs. 10 each (Ex. 240)		Rs.
Purchased 15,000 shares u/d 29-12-48 from Dalmia T. V. Investment Company Ltd. @ Rs. 17 per share.		2,55,000
Sold 15,000 shares u/d 13-5-59 to M/s Harbans T.V. Singh Mehta & Co., Share Brokers @ Rs. 10 per share.		1,50,000
Loss on 15,000 shares @ Rs. 6 per share		1,05,000

B. Bharat Insurance Co. Ltd., "Ordinary shares of Rs. 100 each"				Rs.
Purchased	1,000 shares prior to 1-3-48 from M/s Harbans Singh Mehta & Co., Share Brokers @Rs. 95 per share.	T.V.		95,000
Purchased	1,350 shares on 30-6-48 from M/s Bharat Collieries Ltd., Dalmianagar @Rs. 100 per share.	T.V.		1,35,000
Purchased	500 shares on 31-5-49 from M/s Mehta & Co., Share Brokers @Rs. 40-8-0 per share.	T.V.		20,250
Purchased	59 shares on 30-11-49 from M/s Dalmia Investment Co. @ Rs. 70 per share.	T.V.		4,130
				<hr/> 2,54,380
Sold	460 shares on 16-2-50 to General Marketing Co. Ltd., @ Rs. 30 per share.	T.V.		13,800
Sold	600 shares on 16-2-50 to Premier Merchants Ltd. @ Rs. 30 per share.	T.V.		18,000
Sold	600 shares on 16-2-50 to Rashtriya Industries Ltd. @ Rs. 30 per share.	T.V.		18,000
Sold	619 shares on 26-2-50 to LESCO Ltd. @ Rs. 30 per share.	T.V.		18,570
Sold	30 shares on 28-2-50 to M/s Mehta & Co., Share Brokers @Rs. 29-12-0 per share.	T.V.		892 8 0
Sold	600 shares on 28-2-50 to Mr. Roshan Lal @ Rs. 30 per share.	T.V.		18,000
				<hr/> 87,262 8 0
	Loss on 2,909 shares @ Rs. 57-7-0 approx.			<hr/> 1,67,117 8 0
				<hr/> (Ex. 240)

15,000 Preference shares of Allenberry (item A above) were sold by D.C.P.M. at Rs. 10 per share on 13-5-49 to Messrs Harbans Singh Mehta & Co., Share Brokers who in their turn sold them to Bharat Insurance Co. at the same rate of Rs. 10 (Ex. 240). The 2,909 shares of Bharat Insurance Co. (item B above) were mainly sold to LESCO, General Marketing Co. Ltd., Premier Merchants Co. Ltd., and Rashtriya Industries Ltd. Only 600 shares and 30 shares were sold to one Roshanlal and the Share Broker, Mehta & Co. respectively. (Ex. 240).

All the companies named above, which bought the shares of Allenberry and Bharat Insurance, were concerns under the effective control of the same set of persons who controlled the concerns Allenberry and Bharat Insurance whose shares were sold.

Allenberry was a private Ltd. Company while the shares of Bharat Insurance Co. were not quoted on any Stock Exchange at the relevant time.

The considerations for the purported sales in all these cases were debited in the relevant personal accounts in the books of D.C.P.M. and were not received in cash. The shares of Allenberry & Co. and Bharat Insurance Co. after their disposal by D.C.P.M. did not pass out of the hands of the persons who were in effective control of these concerns.

Taking the Bharat Insurance Co. shares, firstly, these were acquired by D.C.P.M. partly before 1-3-48 (1,000 shares) and partly during 30-6-48 to 30-11-49 (1,909 shares). Out of the total purchase of 2,909 shares, 1,350 were purchased @ Rs. 100 per share on 30-6-48 from Bharat Collieries Ltd., a concern within the same group. The last purchase was

of 59 shares from Dalmia Investment Co. Ltd., another concern within the same group on 30-11-49 @ Rs. 70 per share. Of the balance 1,500 shares, 1,000 shares were purchased from Brokers, Harbans Singh Mehta & Co., and 500 shares from Mehta & Co. The relevant account and records of the former, which often acted as Brokers for share transactions of these persons and concerns *inter se*, are stated to be not available while the identity of the other broker is not known in absence of the accounts etc. of D.C.P.M. (Ex. 240).

Out of the sales of D.C.P.M., 619 Bharat Insurance shares purchased by LESCO were again sold by this buyer company (LESCO) at cost as below : (Ex. 724).

12-11-1951	600 shares at Rs. 30 sold to S. P. Jain
12-11-1951	14 shares at Rs. 30 sold to R. K. Dalmia
12-11-1951	5 shares at Rs. 30 sold to Durga Devi (wife of R. K. Dalmia).

The subsequent movement of the balance of the shares after their sale by D.C.P.M. is not known in the absence of the necessary particulars from the buyers companies, viz., General Marketing Co. Ltd., Premier Merchants Ltd., and Rashtriya Industries Ltd., all of which were dissolved some time ago. Bharat Insurance Co., however, continued to be under the effective control of these persons even after the sales by D.C.P.M.

As for Allenberry shares, 15,000 Preference shares sold to the Brokers, Harbans Singh Mehta & Co. were previously purchased by D.C.P.M. on 29-12-48 at Rs. 17 per share from Dalmia Investment Co. Ltd., another allied concern under the same control. The contract for the subsequent sale of these shares at Rs. 10 per share by D.C.P.M. to the aforesaid broker was made on 18-3-1949 (Ex. 240). A further block of 15,000 Preference shares was bought by the said brokers on the same date and at the same rate of Rs. 10 per share from Dalmia Investment Co. Ltd. and the entire block of 30,000 shares so purchased was simultaneously sold out by them at cost to Bharat Insurance Co. (Ex. 570). Bharat Insurance Co. sold out the entire 30,000 Preference shares on 29-12-49 again at cost (that is, Rs. 10 per share) to Govan Brothers Limited and the latter in its turn sold the shares on 30-9-1950 to D. J. Aviation at the same rate of Rs. 10. D. J. Aviation finally sold the shares to Rashtriya Agencies Limited on 31-12-51, at cost.

All these buyers in succession are allied concerns controlled by the same set of persons (Ex. 463 and Ex. 889). All the 30,000 Allenberry Preference shares were previously held by Dalmia Investment Co. Limited till 29-12-1948 and were acquired by Bharat Insurance Co. on 18-3-1949. Thus although this entire block was intended to be transferred from one controlled concern to another, that is, Bharat Insurance Co., in about two and a half months time, a part of the holdings, namely, 15,000 shares were passed through the hands of an intermediary, D.C.P.M. thereby creating a substantial loss in its hands. (Ex. 889).

29,653 shares out of this block were on a previous occasion purchased and sold by Bharat Insurance Co., at about Rs. 13-8-0 and Rs. 14-3-0 per share on 30-4-45 and 31-12-45 respectively. (The delivery of the shares against the purchase was received from D.C.P.M. and that against the sale was given to Shanti Prasad Jain). After 1945, there was no rise

in the intrinsic worth of these shares so as to justify the higher sale price of Rs. 17 per share for the purported sale of 15,000 shares by Dalmia Investment Co. to D.C.P.M. on 29-12-48. Alternatively, even it be assumed that the purchase price of Rs. 17 per share on 29-12-48 was correct, there was no fall in the intrinsic worth of those shares till the date of their sale by D.C.P.M. so as to justify the selling rate of Rs. 10 per share on 18-3-49 (Ex. 889).

Allenberry declared dividends on these 6% Preference shares for the years 1944 and 1945 on 30-9-1946 and paid the dividend on 30-11-1946. The Company again declared dividends on the shares for the years 1946 and 1947 on 14-6-1949 payable after 30-6-1949. This dividend was recommended by the Directors in their Report adopting the company's accounts on 28-5-49, that is, shortly after the sale of 15,000 shares by D.C.P.M. to Bharat Insurance. (Ex. 253). H. D. Bishnoi was a common director of both Allenberry and D.C.P.M. at all material times (Ex. 637 & Ex. 800).

Even the ordinary shares of Allenberry maintained their selling rate at Rs. 10 per share throughout the period from 31-12-47 to 18-3-49 (the date of the purported sale of 15,000 Preference shares of D.C.P.M. to Bharat Insurance) and even thereafter. Thus there were sales of Ordinary shares at Rs. 10 as below during the said period :

Ex. 570	31-12-1947	75,000 sold	By Dalmia Jain & Co.	To Dalmia Investment
	1/2-7-1948	75,000 sold	By Bharat Collieries	To D.C.P.M.
	29-1-1949	10,000 sold	By R. Dalmia	To Dalmia Investment Co. Ltd.
		50,000 sold	By S.S.B. Mills	To Bhiguraj Charity Trust.
Ex. 456	30-3-1949	25,000 sold	"	To Yogiraj Charity Trust
Ex. 458	"	10,000 sold	By Dalmia Investment	"
Ex. 454	31-3-1949	45,000 sold	"	"
Ex. 455	28-5-1949	30,000 sold	"	to Bhiguraj Charity Trust.
Ex. 459 & Ex. 456	31-5-1949			

D.C.P.M. realised dividend on the Bharat Insurance shares as below during the period they were held by the company.

Dividend on	Period of dividend	Date of declaration of dividend	Amount of dividend	Rate of dividend	Accounting year during which collected	on (Ex.
2,350 shares	5 years upto 1947	31-12-1948	35,250	3%	Year ending 28-2-1949 (Ex. 571).	
2,850 shares	1948	23-9-1949	8,550	3%	Year ending 28-2-1950 (Ex. 572).	

NOTE: Thus Bharat Insurance Co. paid dividend on the shares held by D.C.P.M. even sometime before their purported sale during 16-2-1950 to 28-2-1950. Bharat Insurance Co. declared dividend on its shares for 5 earlier years on 31-12-1948, that is, after D.C.P.M.'s purchase of 1,350 shares at Rs. 100 per share on 30-6-1948. Another dividend for the next year was declared again on 23-9-1949, that is, before any of D.C.P.M.'s sales of these shares. (Ex. 571 and Ex. 572).

Even as late as 30-11-49, some of D.C.P.M.'s purchases were made at Rs. 70 per share. There was no precipitate fall in the intrinsic worth of these shares within a short period of 2½ months between 30-11-49 and the date of D.C.P.M.'s sales in the middle of February 1950 at Rs. 30 per share (Ex. 240).

As discussed earlier, the accounts of the company used to be fraudulently manipulated with a view to bring into existence artificial transactions in shares, which were in fact never made, by merely passing necessary entries with anterior dates in the books of the purported buyers and sellers concerned and for such purported transactions of the company the rates of purchases and sales of shares used to be manipulated to suit the purposes of the persons in effective control. The rates at which the sales were effected by D.C.P.M. and which resulted in heavy losses as mentioned above were similarly deliberately manipulated for extraneous considerations, namely, creation of losses as a set off against the profits of the company for the year.

Shanti Prasad Jain and J. Dalmia, have given practically the same replies in their written statements. They have not said anything regarding the fraudulent manipulations of the transactions which resulted in the creation of fictitious losses but have merely stated that they had ceased to be Directors of D.C.P.M. from November 1947, and did not have even an indirect concern or interest in D.C.P.M. from and after 31st May 1948 on and from which date the D. J. Group stood dissolved. Shanti Prasad Jain has also added that he happened to purchase 600 shares in Bharat Insurance Co. Ltd. @ Rs. 30 per share in 1951 through M/s. Govan Brothers Ltd. and that he re-sold them at the same rate of Rs. 30 per share, again through M/s. Govan Brothers, in 1953. The name of the subsequent buyer however was not given by him.

As will be seen, the losses were largely due to the company being made to sell its investments acquired a few months earlier at unremunerative prices. If the prices paid at the time of purchase are an indication of the intrinsic worth of the shares, which were otherwise not being quoted, no valid reason can be found for the disposal of the same shares at drastically cut prices if the sales were genuine transactions. The Allenberry Preference shares purchased @ Rs. 17 per share on 29-12-48 could not have fallen so heavily by 18-3-49 so as to be sold @ Rs. 10 on that day, especially when even its ordinary shares maintained their selling rate at Rs. 10 per share throughout the period 31-12-47 to 18-3-49.

The shares of Bharat Insurance Co. also, which were purchased as late as 30-11-49 @ Rs. 70 per share, together with other shares purchased at still higher rates earlier could not have been sold in February 1950 (i.e. within 2½ months) at a ridiculously low price of Rs. 30 per share if the sales were genuine.

The charge contained in the Statement of Matters, that sales of the shares of Allenberry & Co. Ltd. and Bharat Insurance Co. Ltd. were shown in the books of D.C.P.M. as having been made fraudulently at rates far below their cost price in the hands of the company with the object of artificially reducing the profits of D.C.P.M. for the year 28-2-1950 is thus proved.

The gain sought to be made by D.C.P.M. was approximately Rs. 1,00,450 as that represents the amount of the Income-tax intended to be evaded. This gain would have gone to the D. J. Group and ultimately to R. Dalmia as the sole beneficiary of the company.

As for responsibility, both J. Dalmia and Shanti Prasad Jain ceased to be directors with effect from 3rd November 1947 and 1st November 1947 respectively. They cannot, therefore, be directly held responsible for this transaction except of course as members of the Group.

As regards R. Dalmia, it is in evidence that he was in over-all control of the company throughout even though he was not a director. Further the benefit resulting from the transaction would have gone to the D. J. Group and ultimately to R. Dalmia as the sole beneficiary of the company. M. K. Roy, Sriram Srivastava, P. S. Patke and H. D. Bishnoi were directors of the company during the material time and as such they cannot escape their responsibility for this transaction. Besides all of them except H. D. Bishnoi signed the relevant Balance Sheets of D.C.P.M. as directors.

The accounts of D.C.P.M. for the year ended 28-2-51 (Ex. 238) were fraudulently manipulated with a view to create and charge to its revenue fictitious losses aggregating Rs. 22,24,260 on sale of investments and Rs. 2,04,056 in share dealing as below. Such fraudulent manipulations resulted in a reduction of the company's profits for the year to the extent of the fictitious losses aggregating Rs. 24,28,316.

Loss on sale of	Amount of loss	Date	
(a) 7,325 Ordinary Madhusudan Mills (of Rs. 100 each)	Rs. 18,72,875	19-1-1951	} Loss on sale of investments.
(b) 35,890 Ordinary Dalmia Investment Co.	1,87,120	13-6-1950	
(c) 91,489 Ordinary Gwalior Bank	64,265	29-4-1950	
	(i) 22,24,260		} Loss on share dealing and speculation.
(d) Transactions in Indian Iron and Steel.	(ii) 2,04,056	During 6-7-50 to 24-1-51	
	24,28,316		(Ex. 240)
TOTAL (i and ii) ..			

The fraudulent manipulations of accounts were effected as follows :

- In case (a) above, artificial transactions in purchase of shares at a higher rate and subsequent sale thereof at a lower rate were brought into existence and recorded in the accounts of D.C.P.M. thereby creating a fictitious loss.
- In cases (b) and (c) above, sales of the shares were shown in the accounts of D.C.P.M. deliberately at rates far below their cost price in the hands of the company.
- In case (d) above, the transactions in share dealings and speculation, though done in the accounts of R. Dalmia and/or others, were deliberately recorded and accounted for in the books of D.C.P.M. as its own business with a view to saddle the company with the net loss which ultimately arose therefrom.

The object was to reduce the profits of D.C.P.M. artificially for the year ending 28-2-1951 with a view to evade proper incidence of Income-tax. In this year, a profit of Rs. 11,56,982 on sale of pipeline and fittings was fraudulently transferred to D.C.P.M. from Allenberry's business in

Drums and Pipelines, (See Allenberry's Ch. I, Pt. 3, Vol. IV). Besides this profit, the company earned Rs. 30,96,793 in its regular trading activities. (Ex. 238). The company, moreover, realised a gain of Rs. 21,20,582 on the sale of Nahur land and appreciation of buildings (See D.C.P.M., Chapter 9) and received compensation of Rs. 46,90,000 for premature termination of the Selling Agencies of the two cotton mills (S.S.B. Mills and M.D.M. Co. Ltd.) held by it. (See S.S.B. and M.D.M., Chapter 4).

In spite of the above profits and gains of over a crore of rupees, the company's audited profits and loss account for the year showed a *net* profit of Rs. 57,51,824 only which meant that the company's normal trading activities resulted in a net loss for the year. (Ex. 238). This net profit of Rs. 57,51,824 was arrived at after adjustment of big items of expenses, interest payment, bad debts etc. and also of a *net* loss "on sale of investments" of Rs. 43,62,565.

The net loss of Rs. 43,62,565 is made up of—

	Loss	Profit	Net loss
On sale of investments	24,15,833	1,753	
On sale of securities	—	83,630	
On dealing in shares	50,25,420	29,93,305	
	<u>74,41,253</u>	<u>30,78,688</u>	43,62,565

The above loss of Rs. 24,15,833 on sale of investments included a loss of Rs. 22,24,260 made up of three large items of losses sustained in ordinary shares of Madhusudan Mills, Dalmia Investment Company and Gwalior Bank. [Of these, Dalmia Investment Company and Gwalior Bank were controlled by the same persons who controlled D.C.P.M. at the relevant time]. The details of the purchases and sales of these investments are as under :

(A) Madhusudan Mills Ltd., Ordinary shares of Rs. 100 each				Rs.	A.	P.
Purchased	5,400 shares on 30-10-1948 from National Finance Ltd., @ Rs. 400 per share.	T.V.		21,60,000	0	0
Purchased	1,125 shares on 14-12-1948 from National Finance Ltd., @ Rs. 400 per share.	T.V.		4,50,000	0	0
Purchased	800 shares on 14-12-1948 from M/s. N.C. & D.C. Ltd., @ Rs. 406/4/- per share.	T.V.		3,25,000	0	0
				<u>29,35,000</u>	<u>0</u>	<u>0</u>
	7,325					
Sold	7,325 shares on 19-1-51 through R. Dalmia @ Rs. 145 per share.	Seth T.V.		10,62,125	0	0
	Loss on 7,325 shares @ Rs. 255/10/- per share.			<u>18,72,875</u>	<u>0</u>	<u>0</u>

(B) Dalmia Investment Company Limited, Ordinary shares of Rs. 10 each

Purchased 35,890 shares on 31-7-1948 from Bharat T.V.
Collieries Ltd., @ Rs. 10 per share.
Sold 35,890 shares on 13-6-1950 to Ashoka T.V.
Marketing Co. Ltd., @ Rs. 2 per share.
Loss on 35,890 shares @ Rs. 8 per share
(C) Gwalior Bank Limited, Ordinary shares of Rs. 5 each
21,489 shares prior to 1-3-48 @ Rs. 5 T.V.
(Approx.) per share.
Purchased 70,000 shares on 28-2-1949 from Rashtriya T.V.
investment Ltd., New Delhi @ Rs. 2/ per
share.

Rs.	A. P.
3,58,900	0 0
71,780	0 0
2,87,120	0 0
1,07,243	4 0
1,40,000	0 0

2,47,243	4 0
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1,82,978	0 0
----------	-----

64,265	4 0
--------	-----

22,24,260	0 0
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(Ex. 240)

5. The share-dealing loss (Rs. 29,93,305 profit less Rs. 50,25,420 loss) referred to earlier included the loss of Rs. 2,04,056 from transactions in Indian Iron & Steel [Transaction (d)]. This loss was sustained in the share business done at Calcutta. (Ex. 240).

Transactions "a"

As for the loss on sale of investments, the shares of Madhusudan Mills were purported to have been purchased by D.C.P.M. as below : (Exs. 240, 891 & 893).

No. of shares of Rs. 100 each	Purchased from	Date	Purchase rate per share
5,400 Ord.	National Finance Limited.	30-10-48	400 0 0
1,125 Ord.	-Do-	14-12-48	400 0 0
800 Ord.	National Construction and Development Co. Ltd.	14-12-48	406 4 0

7,325

The entire lot of the aforesaid 7,325 shares purported to have been sold by D.C.P.M. on 19-1-1951 at Rs. 145 per share through R. Dalmia (Ex. 240). This transaction resulted in an alleged loss of Rs. 18,72,875 in the hands of D.C.P.M. (Ex. 240).

The purchase considerations were not paid by D.C.P.M. in cash but were credited in the personal accounts in the Books. The sale considerations were also at first debited in the account of the buyer, R. Dalmia, but were received from him forthwith by D.C.P.M. in two cheques of Rs. 10 lakhs and Rs. 62,125 from Express Newspapers Limited endorsed in favour of D.C.P.M. (Ex. 240). These 7,325 shares bought by R. Dalmia were immediately sold

by him at the same rate to Express Newspapers Limited which in its turn simultaneously sold them again at the same rate to National Investment Trust Limited (Exs. 896 & 895).

National Construction and Development Limited and National Finance Limited (which companies originally sold the shares to D.C.P.M.) and National Investment Trust Limited (which ultimately re-purchased them from D.C.P.M. were all concerns controlled by Yodhraj Bhalla. It would appear from the facts stated later that the D. J. Group acquired control of the Punjab National Bank sometime before May 1948.

Prior to that the Punjab National Bank was also under the control of Yodhraj Bhalla who was the manager and the Chairman of the Bank [See the Calcutta Stock Exchange Year Book 1951 (Ex. 887)]. A big block of shares of this Bank were held by him and the aforesaid three companies. [See the Registrar's records—Ex. 887]. The camp address of all these three companies in 1948 was 12, Hailey Road, New Delhi, which was also the address of Yodhraj Bhalla and of the Punjab National Bank. The subsequent address of these three companies was 72 or 74 Janpath, New Delhi, where many other concerns of the Bhalla Group were located (Ex. 887).

Yodhraj Bhalla was the Director of the National Construction and Development Co. Ltd., in 1948 and held 2,000 shares in it during 1948 to 1952. (Exs. 886, 892 and 893). Big blocks of its shares were held by National Investment Trust Limited, National Finance Ltd. and the Punjab National Bank Limited during 1948 to 1952. (Exs. 884, 885, 890, 891, 894 & 895). 14,750 shares out of the total share capital of 49,603 ordinary shares of National Finance Limited were at one time held by National Constructions and Development Company Limited. (Ex. 885).

Some of the very close relations of Yodhraj Bhalla and persons connected with him, namely, those listed below had been Directors, Managers, and/or Secretaries of National Construction and Development Co. Limited and National Finance Co. Limited (Ex. 886).

Name of the persons	Relationship or connection	Name of the Company, how connected with it
1. Lalla Ram Prasad	.. Father-in-law of Bhalla.	N.C. & D. Corporation Ltd., Director.
2. N. C. Malhotra ..	.. Brother of Bhalla's wife.	Do. Secretary
3. S. K. Nanda ..	.. Son of Bhalla's sister.	Do. Director
4. Mrs. Shanti Malhotra	.. Wife of Ramesh Chandra, the brother of Bhalla's wife.	National Finance Co. Ltd., Director.

The Madhusudan Mills Ltd., whose shares purport to have been bought and sold by D.C.P.M. was also a concern of the Bhalla Group. The Registered Office of the Mill company though originally at Bombay, had been located at 72, Janpath, New Delhi, for a long time (Ex. 888). The National Construction and Development Co. and National Finance Co. had substantial holdings in this mill company. The sanction of the High Court had already been obtained by the mill company for its amalgamation with the National Investment Trust Ltd., from 1-7-57. (See the Registrar's records and audited accounts of the company for the year ending 30-6-58—Ex. 888).

The 7,325 shares of the Bhalla Group concern of Madhusudan Mills had always been in the hands of one or the other of the concerns of this Group, except for a short period from 30-10-48 to 19-1-51, when in course of a chain of supposed transactions, these shares moved through the hands of D.C.P.M., thereby creating in its hands a substantial loss of Rs. 18,72,875. The entire loss purporting to have been sustained by D.C.P.M. ultimately reached the hands of some of the Bhalla Group concerns.

It may be mentioned in this connection that a sum of Rs. 18,50,000 was deposited by D.C.P.M. with the National Investment Trust Ltd., during 16-6-48 to 24-8-48 and this deposit, which was a non-interest bearing one, was adjusted on 30-10-48 against the sale price receivable by the National Finance Ltd. from D.C.P.M. for the earlier sale of Madhusudan Mill shares as mentioned earlier. (Ex. 891 and Ex. 1068.)

There are sufficient materials on record to show that the aforesaid chain of transactions in 7,325 shares of Madhusudan Mills Ltd. were not made in the normal course of business but were *fraudulently brought into existence*, with a view to create an artificial loss of Rs. 18,72,875 to D.C.P.M. with a set purpose. The purpose as will appear from facts to be stated later, was to cloak the payment of an equivalent amount by D.C.P.M. to the Bhalla Group in consideration of their having agreed to transfer a big block of shares of the Punjab National Bank Ltd., together with the controlling interests attached thereto to Shanti Prasad Jain's concern, Ashoka Marketing Ltd.

These supposed purchases of the Madhusudan Mills shares were made by D.C.P.M. at rates *much higher* than those quoted at the relevant time as indicated below :

Purchase of D.C.P.M.		Market Rate	
Date	Rate	Date	Quoted Rate
	Rs.		Rs.
30-10-48	400 per share	28-10-48	223 12 0 per share
14-12-48	400 „	9-12-48	211 4 0 „
14-12-48	406 „	9-12-48	211 4 0 „

[See "Commerce" dated 30-10-1948 and 11-12-1948]

It may be pointed out that the above purchase rates were *ex-dividend* rates (Exs. 891 & 893), and Dividend @ 15% for the year ended 30-6-48 was paid on these shares on 21-2-49, i.e., within a few months after the purchase of the shares. (Exs. 891, 893 and Commerce dated 30-10-48, 11,12,48 and 20-1-51.)

Thus the purported purchase price payable by D.C.P.M. included a very substantial amount for some consideration other than the prevailing market value at the relevant time.

The total share capital of Madhusudan Mills Ltd. at all material times was made up of 28,000-A Ordinary shares of Rs. 100 each and 18,000-B Ordinary shares of Rs. 20 each. Thus the holding of 7,325-A Ordinary shares that purport to have been purchased and sold by D.C.P.M. *per se*, was not a controlling block of shares.

D.C.P.M. and other D. J. Group concerns did not hold any shares in the Mills Company at the time of the purported purchase. Thus the 7,325 shares

purchased by D.C.P.M. could not have constituted a controlling block of shares of the Company in the hands of the D. J. Group. In fact, the controlling interest in the Mills company did not pass into the hands of the D. J. Group or R. Dalmia, J. Dalmia & Shanti Prasad Jain at any time during the period when its 7,325 shares purported to have been held by D.C.P.M. (i.e., from the end of 1948 to the beginning of 1951). None of the members of the D. J. Group or their relations or other persons connected with them even became the Directors of the Mills Company at any time during the said period.

Bhadani Brothers Limited, were the Managing Agents of the Mills Company in 1948. The Managing Director of the Company between 1948 and 1952 was Dewan Dina Nath, a person closely connected with the Bhalla Group (Ex. 888). It will thus be seen that a very substantial amount of the purchase price paid by D.C.P.M., over and above the market value of the shares at the relevant time, could not have represented any consideration for acquisition of any interest in the control and management of the company.

The 7,325 shares of the Madhusudan Mills purport to have been sold by D.C.P.M. on 19-1-1951 at Rs. 145 per share. The market rate quoted at the relevant time, was Rs. 147-8-0 per share. [See "Commerce dated 20-1-1951."] This purported sale at the aforesaid rate as already stated, was made through several intermediaries to a concern of the Bhalla Group again, the group from which these shares were originally purchased at rates *much higher* than the then market rates.

Madhusudan Mills Limited whose shares were purported to have been sold as above at a huge loss was regularly paying dividend on the shares till the time of the purported sale by D.C.P.M. Dividends were declared as below :—

30-6-45	..	..	..	..	..	..	..	..	18-12-0%
30-6-46	..	..	..	..	..	..	..	..	15%
30-6-47	..	..	..	..	..	..	..	..	10%
30-6-48	..	..	..	..	..	..	..	..	15%
30-6-49	..	..	..	..	..	..	..	..	7-8-0%

[Commerce dated 30-10-1949, 11-12-1948 & 20-1-1951.]

It will thus be seen that the big loss in the Madhusudan Mills shares arising from the purported payment of an inflated purchase price was really paid to the Bhalla Group of concerns not as a result of any genuine rise in their intrinsic worth at the time of the purchase but for extraneous considerations. The aforesaid dividend at 7½% for the year ending 30-6-49 was declared during the period when the shares were held by D.C.P.M. (that is, from 30-10-48 to 19-1-51). But D.C.P.M. did not collect any dividend on its holdings during any of the years ending 28-2-1949 to 28-2-1951 (Exs. 571 to 574 and Ex. 577). Thus, though the 7,325 shares purport to have been purchased and sold by D.C.P.M. they were not held by it beneficially during the intervening period. This indicates that the relevant transactions between the parties concerned were not genuine.

As stated earlier, the Punjab National Bank Ltd., was at one time a concern under the control of the Bhalla Group. Yodhraj Bhalla was a registered shareholder of the Bank and was its General Manager and Chairman in 1948 and thereafter till at least the time of the purported sale and purchase of the 7,325 Madhusudan Mills shares. (Ex. 887). He,

together with the aforesaid concerns of National Construction and Development Co. Ltd., National Finance Ltd., and National Investment Trust Ltd., held 31,925 shares of Rs. 100 each out of the total of 87,500 shares of the bank in August, 1948 (Ex. 887).

The National Investment Trust itself held 27,042 shares at that time but this company, as would appear from discussions later, had gone into the control of the D. J. Group by May, 1948. Yodhraj Bhalla and the above mentioned companies held 127,756 shares of Rs. 25 each including the National Investment Trust's holding of 108,224 shares out of the total of 350,000 shares in 1949, i.e., after the sub-division of the ordinary shares of Rs. 100 each into the shares of Rs. 25 each.

Their holdings continued to be substantial even after 1949. (Ex. 887).

The above-mentioned National Investment Trust Ltd., which ultimately bought the 7,325 shares of Madhusudan Mills from the D.J. Group in 1951, held 27,042 shares of the Punjab National Bank Ltd. in 1948, and subsequently 108,224 sub-dividend shares of Rs. 25 each, and similar big blocks in 1949 and thereafter (Exs. 884, 887, 1067 and 1069).

This Company, *simultaneously with its purchase of 7,325 Madhusudan Mills shares on 19-1-51 from D.C.P.M., through intermediaries, sold out 116,214 shares of the Punjab National Bank Ltd., (out of the said block) to Express Newspapers Ltd., for Rs. 35,83,857 in terms of an agreement. The purchase consideration payable by the company for the Madhusudan Mills shares was adjusted against the above sale consideration of the Punjab National Bank shares (Ex. 895 and Ex. 1067).*

The Express News Papers Ltd., in its turn sold out later this block of the Punjab National Bank shares (together with some more shares) to Ashoka Marketing Ltd., a concern under the control of Shanti Prasad Jain (Ex. 1067).

The date of the relevant sale bill is 31-8-1951, but the actual date of the contract for sale has not been furnished by Express News Papers Ltd. (The agreement relating to the deal in Punjab National Bank shares between National Investment Trust Ltd., and Express News Papers Ltd., has also not been produced.)

It may be mentioned in this connection that the Punjab National Bank Ltd., as already shown in our discussions on "Inter-company Transfers—Borrowings, Loans and Advances" in Chapter IV, was under the control of the D.J. Group from before 31st May 1948, the alleged date of the dissolution of the Group. They exercised such control in view of the fact that out of the share capital of 87,500 undivided ordinary shares of Rs. 100 each of the bank in 1948, the Group owned a big block of 13,743 shares worth Rs. 60,91,585 since before May 1948 (Ex. S. 75 and Ex. J. 24/945). Moreover, they controlled at that time the company, the National Investment Trust Ltd., which held another substantial block of Punjab National Bank shares, as already stated (Ex. S. 75 and Ex. 1069). S. R. Srivastava, a Director of D.C.P.M. from 15-1-49 became a Director of the National Investment Trust Ltd. on 15-2-48 (Ex. 884).

Subsequently, however, this National Investment Trust Ltd., ceased to be a company in the same group as the other companies under the control of R. Dalmia, J. Dalmia and Shanti Prasad Jain (Ex. 1069). It

became a company of the Bhalla Group at the time when it finally sold its big block of Punjab National Bank shares to Ashoka Marketing Co. Ltd. in August 1951, as indicated above.

It is in evidence (Ex. J. 24/945) that R. Dalmia, and J. Dalmia between themselves continued to hold the other block of 13,743 undivided shares of the bank till August 1951 and even thereafter.

Thus the big controlling block of shares in the Punjab National Bank owned by National Investment Trust Ltd. passed from the Bhalla Group into the hands of Ashoka Marketing Co. Ltd., which was then under the control of Shanti Prasad Jain, towards the beginning of 1951, that is some-time after the close of the deal in the 7,325 Madhusudan Mills shares on 19-1-1951. It therefore follows that the entire chain of transactions with the D. J. Group pertaining to the Madhusudan Mills shares were not made in the normal course of business, but were fraudulently brought into existence with a view to create an artificial loss to D.C.P.M. for the following purposes :

- (a) To cloak the payment of at least an equivalent amount by D.C.P.M. to the Bhalla Group in consideration of their having transferred the controlling blocks of shares and/or the controlling interest in the Punjab National Bank Ltd., to Ashoka Marketing Co. Ltd.
- (b) To utilise such loss as a set off against the profits of D.C.P.M. for the relevant period of account.

Of the various persons to whom the D.C.P.M. Statement of Matters in respect of FRAUD SECTION 'I' was issued, detailed replies were received from Shanti Prasad Jain alone.

R. Dalmia did not send any reply while J. Dalmia stated in his written Statement that he was not concerned with any of the transactions entered into by D.C.P.M. after 31st May 1948. He denied that there was any D.J. Group or D.J. Group concerns from and after 31st May 1948 and that being the position, he added, there was no question of the D.J. Group seeking to make any alleged gain for itself as referred to in Section 'I'.

Shanti Prasad Jain replied on similar lines, but also added that as far as transaction (a) relating to the Madhusudan Mills shares was concerned, the appointment of Shriyans Prasad Jain, Shital Prasad Jain, Shanti Prasad Jain and Ashok Kumar Jain, in 1952 and thereafter, as Directors of the Punjab National Bank Ltd. had nothing to do with the D. J. Group which had already ceased to exist from and after 31st May 1948. According to him the aforesaid appointments and the purchase of a large block of shares in the Punjab National Bank Ltd. by Shanti Prasad Jain and/or his associates in 1951 and/or thereafter had nothing to do with the purchase or sale of the Madhusudan Mills shares by D.C.P.M.

He took a similar stand during the course of his oral evidence before the Commission when he denied any knowledge of the purchase or sale transactions of these shares. He gave the following replies to the questions put to him by Shri Petigara, Counsel of the Commission :

- Q. "Do you know if 7,325 shares of Madhusudan Mills were purchased or purported to be purchased by D.C.P.M. during the period 31-10-48 and 14-12-48 ?

- A. I have no knowledge of any purchase by D.C.P.M. between October 1948 and December 1948 and also I have no knowledge in respect of the purchase of the said shares.
- Q. Were these shares subsequently sold on 19-1-51 to R. Dalmia ?
- A. I have no knowledge either of the sale of Madhusudan Mills shares by D.C.P.M. on 19-1-51 or of the purchase of the said shares by R. Dalmia on the said date.
- Q. Do you know that the sales resulted in a loss or a deficit of Rs. 18,72,875 ?
- A. I have no knowledge what loss, if at all, the said transaction resulted."

Of the three members of the D. J. Group, Shanti Prasad Jain alone went into the witness box before the Commission but he did not throw any further light on these transactions.

Thus nothing has been said by any of the persons to whom the Statement of Matters in respect of these transactions was issued regarding their genuineness and there has been no attempt to rebut the allegations contained in the charge by evidence. In fact Shanti Prasad Jain admitted that a large block of shares of the Punjab National Bank Ltd., was purchased by him in 1951 and/or his associates.

As stated earlier, during the period these Madhusudan Mills shares remained with D.C.P.M., they were not held by it beneficially. They were purchased in October/December 1948 from the Bhalla Group at abnormally high rates, much higher than the market rate, and were sold back to the said Group in January 1951 at rates lower than the market rates. The reasons for this can only be extraneous ones.

In spite of the denial in a general way by Shanti Prasad Jain of these allegations saying that the purchase of the Punjab National Bank shares and resale of Madhusudan Mills shares, both in 1951, were two independent transactions and were not interconnected, the fact remains that the controlling block of shares in the Punjab National Bank Ltd., passed from the Bhalla Group into the hands of a concern of Shanti Prasad Jain towards the beginning in 1951, that is, sometime after the close of the deal in 7,325 shares in 1951. This obviously involved payment of a large sum for the controlling interest attached to the shares in the Punjab National Bank Ltd. But Shanti Prasad Jain has not explained at any stage as to how the consideration therefor was paid by him and/or his associates.

The entire chain of transactions with the D. J. Group pertaining to the Madhusudan Mills shares were thus not made in the normal course of business but were fraudulently brought into existence with a view to create an artificial loss to D.C.P.M. and were obviously intended to cloak the payment of at least an equivalent amount by the D. J. Group to the Bhalla Group in consideration of their having agreed to transfer the controlling blocks of shares and/or controlling interests in the Punjab National Bank Ltd., to Ashoka Marketing Co. Ltd., one of Shanti Prasad Jain's concerns. The artificial loss was also utilised as a set off against profits of D.C.P.M. for the relevant period of account.

Dealing next with the transactions (b) and (c) pertaining to the shares of Dalmia Investment Co. and the Gwalior Bank. The sale of these shares was made respectively to Ashoka Marketing Co. Ltd., and Rashtriya Investment Ltd. (Ex. 240). These concerns were also under the control of the same persons who were in control of D.C.P.M. The two companies, whose shares were sold, were also under the same control at the material time. (Of these, Dalmia Investment Co. was a private limited company.)

These sales were in large quantities (35,890 shares of Dalmia Investment Co. Ltd., and 91,489 shares of Gwalior Bank) and would have gone a long way towards constituting in the hands of the acquiring persons, a controlling block of shares, or very near it, of the companies concerned.

The block of Dalmia Investment shares was purchased by D.C.P.M. on 31-7-48 at Rs. 10 per share from Bharat Collieries Ltd. (Ex. 240 and Ex. 579). Bharat Collieries Ltd., had previously purchased these shares at the same rate from D.C.P.M. itself as below :

On 28-2-45	17,000 shares
On 31-10-46	8,600 shares
On 31-12-46	10,290 shares.
	(Ex. 579 & Ex. 240)

Dalmia Investment Co. Ltd., after the acquisition of its shares on 13-6-50 by Ashoka Marketing Co. Ltd., at Rs. 2 per share continued to be under the same control though under the changed name of Rishab Investment Ltd.

The Gwalior Bank shares, sometime after their acquisition by Rashtriya Investment Ltd., passed into the hands of D. J. Aviation Ltd., another concern under the same control on 29-4-50 at the very same rate of Rs. 2 per share (Ex. 240). D. J. Aviation Ltd., sold this entire block of shares back to D.C.P.M. on 28-2-51 (70,000 shares) and on 12-11-51 (21,489 shares) at cost (that is, at Rs. 2 per share). The Gwalior Bank continued to be under the same control till its liquidation and dissolution.

Even if we assume that there was a fall in the intrinsic value of the shares by the dates of their sales by D.C.P.M., their sale value would be much higher than the prevailing market value in view of the fact that they constituted controlling blocks in the hands of both the buyer and seller.

The sale considerations in all these cases were debited in the relevant personal accounts and were not received in cash. The shares of Dalmia Investment and the Gwalior Bank, after their disposal by D.C.P.M., did not altogether pass out of the hands of R. Dalmia and/or D. J. Group.

In explaining transaction (c), J. Dalmia stated in his written statement that he was not concerned with the affairs of D.C.P.M. from and after 31st May 1948. Shanti Prasad Jain has also stated the same thing. R. Dalmia, as stated earlier, sent no reply. Thus the allegations relating to transaction (c), pertaining to the Gwalior Bank shares, remain un rebutted.

As for item (b) relating to the shares of Dalmia Investment Co. Ltd., Shanti Prasad Jain stated that the price paid by Ashoka Marketing Co. Ltd., to D.C.P.M. for the shares of Dalmia Investment Co. Ltd., was fair and reasonable because the shares in Dalmia Investment Co. Ltd., were of the face value of Rs. 3,56,900 only as against the total paid-up capital of

Rs. 45 lacs of the Dalmia Investment Co. Ltd., and as such they did not constitute a block affecting the controlling interest of that company.

He has further stated that Dalmia Investment Co. Ltd., was not a Dalmia Jain Group concern at any time from and after 31st May 1948, and that there was no question of its being under the effective or any control of the D. J. Group from and after the said date as the D. J. Group itself stood dissolved on 31st May 1948.

Shanti Prasad Jain has not adduced any reasons in support of his contention that payment by Ashoka Marketing for Dalmia Investment shares was fair apart from saying that these shares did not constitute a controlling block of shares in that company. Dalmia Investment was a private company and its shares were not quoted on the market. The transactions referred to above did not constitute a sale to an outsider but were in fact entered into for a reshuffling of holdings of the members of the Group *inter se*.

Dalmia Investment Co. according to the version of the D. J. Group, had first gone, in 1948, to the control of R. Dalmia and later, in 1950, it was transferred from R. Dalmia to Shanti Prasad Jain. The transfer necessitated a further reshuffling of holdings *inter se*. The rates, however, at which the said reshuffling was effected were mutually agreed to by and between the parties in disregard of the effect that "these mutually agreed" rates would have on the interests of the companies concerned.

These 35,890 shares of Dalmia Investment Co. constitute a large block and an element of control was attached to them. Their sale at Rs. 2 as against their purchase at Rs. 10 earlier was obviously a manipulated transaction and was not genuine. The transaction was deliberately manipulated to suit the members of the D. J. Group *inter se*. The resulting losses were utilised as a set off against the profits of the company for the year to avoid proper incidence of income-tax payable by the company.

Transaction (d)

The loss of Rs. 2,04,056 sustained in transaction (d) arose from the company's supposed transactions in Indian Iron shares with Messrs. Mahali Ram Sonthalia, Share Brokers (of 23/24 Radha Bazar Street, Calcutta). The loss was debited to 'loss in dealing in shares account' by crediting the above-named broker under the following narration in the company's Delhi books under dated 28-2-51,

"Being amount of loss in dealing in shares of Indian Iron & Steel on different dates, adjusted as per statement, contracts and clearings attached."

The relevant journal voucher (No. 57) was supported by a statement, contracts and letter from the broker firm (Ex. 240).

Though the share transactions giving rise to this loss were made between 6-7-50 and 24-1-51, the entry for the loss was made in the company's books on 28-2-51, the closing date of the accounting period. The statements and contracts were all made out in the name of Virendra Singh Chordia, which means that the entire loss arose out of contracts executed by him. (Ex. 240).

The accounts and records of the company made available for inspection to the Inspectors appointed under the Companies Act, disclosed that at no time during the period of the relevant transaction, was the company in

any way involved in these share transactions. At no time did Virendra Singh Chordia hold any power of attorney from the company, nor was he authorised to deal in shares on behalf of D.C.P.M. (Ex. 240).

Shri Chordia is the brother-in-law of R. Dalmia (his wife's brother). His address as given in the letters from the broker firm forwarding the statements and contracts was—

“C/o. Seth Ram Krishna Dalmia,

3, Sikandra Road,

New Delhi.”

R. Dalmia used to carry on his *personal speculation* business in shares either himself or through G. L. Chokhani or others at Bombay and Calcutta (See the evidence of P. S. Chokhani or others at Bombay and Calcutta dealings though done in the account of R. Dalmia and/or others were fraudulently recorded and accounted for in the books of the D.C.P.M. as its own business with a view to saddle the company with the net loss which ultimately arose therefrom.

No replies to the above allegation were received from any of the persons to whom the D.C.P.M. Statement of Matters was issued in this regard, and, therefore, these allegations stand un rebutted.

The gain sought to be made by D.C.P.M. as a result of the transactions (a), (b), (c) and (d) discussed above, was Rs. 9,69,429 approximately representing the amount of income-tax that would otherwise have been payable by the company; and the gain to the D J. Group and R. Dalmia would be about the same.

Only Shanti Prasad Jain and J. Dalmia replied to the Statement of Matters in detail on the merits. We have dealt with their replies earlier.

As for responsibility, both J. Dalmia and Shanti Prasad Jain ceased to be directors of D.C.P.M. with effect from 3-11-47 and 1-11-47 respectively. Since all the impugned transactions were put through long thereafter, they cannot be held directly responsible. The purchase of Madhusudan Mills shares at an inflated price, which ultimately resulted in a loss of Rs. 18,72,875, were purported to have been initiated on 30-10-48 and concluded on 14-12-48. Also the deposits aggregating to Rs. 18,50,000, which were later adjusted against the said inflated purchase price of the shares, were made by D.C.P.M. between the period 16-6-48 and 24-8-48. Therefore the members of the D. J. Group particularly R. Dalmia must be held responsible.

Regarding R. Dalmia, as we have already stated while dealing with his responsibility in regard to the transactions referred to in earlier sections, he was in over-all control of the company throughout. Further, the benefit resulting from the transactions would have gone to the D. J. Group and ultimately to R. Dalmia as the sole beneficiary of the company.

S. R. Srivastava, P. S. Patke and M. K. Roy were the Directors of the Company and also signed the balance sheet pertaining to the year ended 28-2-51 as Director. They cannot escape their responsibility for neglecting their duties. Similarly H. D. Bishnoi also cannot escape his responsibility, since he was a Director of the Company at the time when the purported purchases of the Madhusudan Mills shares at an inflated price were made.

CHAPTER XIV

THE 2323 VEHICLES AND TRANSFER OF Rs. 52 LACS

We have examined the case of the 2,323 vehicles at length in Volume III, Part 2 (2.b), and the transfer of the Rs. 52 lakhs in Volume IV, Part 2. We will only say here that Allenberry is said to have transferred 2,323 Disposal Vehicles to D.C.P.M. on behalf of the Joint Venture of Allenberry and D. J. Airways "at cost" for Rs. 47,19,800 on 28-2-47. We have held that there was no transfer and that the entries in the books, balance sheets at a later date. We have also held that the net gain to D.C.P.M. through this fraud was about Rs. 14,97,347.

In the case of the Rs. 52 lakhs, this is supposed to represent a transfer of that sum from the account of the Drum and Pipelines Section of Allenberry's business to D.C.P.M. on the same date, 28-2-47. We have held that this was also a fictitious transaction and that the entries relating to it were ante-dated. We will not repeat ourselves here.



CHAPTER XV

LIQUIDATION, TRANSFER OF ASSETS AND DESTRUCTION OF BOOKS AND RECORDS

After achieving the objects with which we have dealt in earlier chapters, R. Dalmia decided that it was time that the Corporate existence of D.C.P.M. should be put an end to, so the Company was taken into voluntary liquidation.

The liquidation of D.C.P.M., the transfer of its assets and liabilities to a sister Company, the Delhi Glass Works Ltd., and thereafter destruction of its books and records was in consonance with the pattern followed in the case of a number of other companies. This was with a view to avoid and/or obviate possible proceedings, Civil and/or Criminal, as a result of the investigation into its affairs under Section 138 of the Indian Companies Act, 1913.

In 1948, D.C.P.M. was appointed selling agents of S.S.B. Mills and M.D.M. Co. Ltd., which had earlier been acquired by the D. J. Group. These two companies had about Rs. 90 lakhs as accumulated reserves and profits at the time of the acquisition. In February 1951, Rs. 46,90,000 was paid by S.S.B. Mills Ltd., and M.D.M. Co. Ltd., to D.C.P.M. as compensation for the alleged breach of the selling agency agreements. By this device D.C.P.M., and through D.C.P.M., R. Dalmia, got the benefit of the aforesaid sum of Rs. 46,90,000 without having to pay tax thereon, since compensation was not liable to tax at that time in the hands of the recipients.

The services of Shriyans Prasad Jain who had been appointed in 1943 as officer-in-charge of D.C.P.M., Bombay Office, were terminated in November, 1949, and compensation of Rs. 7 lakhs was paid to him for the unexpired period of 18 years 4 months for premature termination of his services. By this device Shriyans Prasad Jain received the aforesaid sum without having to pay any tax.

Again by an Agreement, dated 30th December 1950, D.C.P.M. fraudulently and collusively made a profit of Rs. 21,19,586 on the sale of the Nahur Land to Bharat Insurance Co. Ltd., as discussed elsewhere in this report. In Bharat Insurance Co. Ltd., the investing public and policy holders were interested whereas in D.C.P.M. the D. J. Group and later R. Dalmia were wholly interested.

In April 1951, the Registrar of Companies started making enquiries from D.C.P.M. specially in respect of the payment of compensation of Rs. 7 lakhs to Shriyans Prasad Jain and also other items.

In or about July 1951, D.C.P.M. became indebted to D. J. Airways to the extent of Rs. 3,43,78,924. Of this amount, Rs. 2,44,25,417 was made repayable without interest in 19 annual instalments of Rs. 17,50,000; the first instalment was to commence in October 1956. (Ex. 5).

In December 1951, S.S.B. Mills and M.D.M. Co. were taken into liquidation. (Exs. 487 & 506).

In April 1952, both D.C.P.M. and D. J. Aviation were converted from Public Limited Companies to Private Limited Companies (Exs. 220 & 223). On 13th June 1952, D. J. Airways Ltd., was taken into voluntary liquidation and Shri C. P. Lal was appointed as Voluntary Liquidator. In August 1952, Government appointed Inspectors under Section 138 of the Indian Companies Act, 1913, to investigate into the affairs of D.C.P.M. for the three years commencing from 1st March 1948 to 28th February 1951. (Ex. 240).

On 4th September 1952, Rashtriya Financial Corporation was taken into voluntary liquidation. The Voluntary Liquidator of D. J. Airways submitted a scheme to the Court under Sections 153 and 153A of the Indian Companies Act, 1913, under which the assets and liabilities of D. J. Airways were to be transferred to D. J. Aviation in lieu of which D. J. Aviation agreed to pay to the shareholders of D. J. Airways a sum of Rs. 5-4-0 per share immediately or a larger amount spread over a number of years. The scheme was approved by the Court on 12-2-1953. Against the amount of Rs. 3,43,78,924 due by D.C.P.M. to D. J. Airways, D.C.P.M. paid Rs. 25 lakhs to the liquidator of D. J. Airways and the balance of Rs. 3,18,78,924 was transferred to D. J. Aviation pursuant to the scheme.

Of this amount, Rs. 2,44,25,417 was, as indicated earlier, payable without interest in annual instalments of Rs. 17,50,000. The first instalment was payable in October 1956 (Exs. 5 & 5A). Against the amount of Rs. 3,18,78,924 due by D.C.P.M. to D. J. Aviation a sum of Rs. 2,13,67,226 was adjusted in respect of the assets transferred by D.C.P.M. to D. J. Aviation Ltd. This reduced the liability of D.C.P.M. to a sum of Rs. 1,05,11,697-7-0 against which an entry was passed in the books of D. J. Aviation on or about 17-2-53 for Rs. 98,77,577-6-10 in respect of 'loss on settlement of claims'. This loss on settlement of claims constituted a profit to D.C.P.M.

On 18-2-1953, a meeting of the shareholders was convened by waiving the formal notice period of 21 days. At this meeting a special resolution was passed taking D.C.P.M. into voluntary liquidation. D. A. Patel was appointed as Voluntary Liquidator on a remuneration of Rs. 500 (Exs. 225/1 & 537). The Voluntary Liquidator was also given a general authority to enter into an agreement on such terms as he considered proper under Section 208C of the Indian Companies Act, 1913 or in the alternative to take steps for obtaining the sanction of the Court to an arrangement by way of reconstruction, amalgamation or otherwise under Sections 153 and 153A of the Indian Companies Act, 1913. (Ex. 225/1).

By a resolution, dated 21st March 1953, the Liquidator was further armed with the powers given under clauses (d), (e), (f) and (h) of Section 179 and also all the (Ex. 233/1) powers under Section 234 of the Indian Companies Act, 1913. (Exs. 233/1 & 2).

On 27th March, 1953, a petition was made by D. A. Patel, Voluntary Liquidator to the District Judge under Sections 153 and 153A of the Indian Companies Act, 1913 (Exs. 233/1 & 2). In the petition, an arrangement was proposed between D.C.P.M. and its members to amalgamate it with Delhi Glass Works Ltd., a sister concern and to dissolve D.C.P.M. without winding up. At an extraordinary general meeting of the Delhi Glass Works Ltd. which was called on 25th March, 1953, the proposed scheme was placed before the meeting and the same was approved by its shareholders. Mr. Jain, General Manager, Delhi Glass Works Ltd., was

authorised to get the aforesaid scheme implemented and to sign all documents, papers, notices etc. On or about 26-3-53, D. A. Patel, Voluntary Liquidator, filed an affidavit stating that according to the books of D.C.P.M. there were no creditors of D.C.P.M. nor was there any claim upon D.C.P.M. by any person claiming to be so; and that the liquidation expenses were not likely to exceed Rs. 5,000. (Ex. 233).

On 31-3-53, the Court ordered that a General Meeting of the shareholders of the company be held on 14th April 1953, and also that three separate meetings of each class of the shareholders be held on the same day to consider the scheme.

Dalbir Singh, Advocate was appointed as Chairman of the said meetings. (Ex. 233).

All the four meetings were held on 14th April, 1953. They were attended by the following, (Exs. 603, 201 & 592) :

(A) *General Meeting of all the shareholders :*

1. R. Dalmia	Pref. Ordy. Defd.	19,082 197,200 359,000	Presented by his proxy S. N. Dudani
2. M/s. Govan Bros. Ltd. ..	Pref.	5,000	Represented by R. P. Gurha (Vide authority resolution).
3. R. P. Gurha	Pref. Ordy. Defd.	830 1,100 140,000	Present in person.
4. P. S. Patke	Pref. Ordy.	88 300	Do.
5. S. N. Dudani	Pref. Ordy. Defd.	— 1,000 1,000	Do.

(B) The same persons were present at the respective meetings on 14-5-53 of the Preference, Ordinary and Deferred Shareholders. At all the four meetings R. Dalmia was present by his proxy S. N. Dudani (Exs. 234) to 236). At all the four meetings the scheme was approved unanimously. (Exs. 234 to 236).

Raghunath Rai had earlier informed the Registrar of Companies in his letter, dated 10-6-52 that 300 ordinary shares of D.C.P.M. registered in his name were held by him as a nominee of R. Dalmia and that he had no personal interest in them (Ex. 592/62). R. P. Gurha in his letter, dated 12-6-52 informed the Registrar of Companies, Delhi, that 140,000 Deferred shares and 1,100 Ordinary shares registered in his name were held by him as a nominee of R. Dalmia and that he had no personal interest in them (Ex. 592/64 and Ex. 592/66). P. S. Patke also informed the Registrar of Companies, Delhi, that 88 Preference shares and 300 Ordinary shares of D.C.P.M. registered in his name were held by him as a *benamidar* of R. Dalmia and Govan Bros. Ltd. and that he had no personal interest in them. (Ex. 592/62). Thus R. Dalmia was the sole beneficiary of all the shares of D.C.P.M.

On 30th April 1953, the Court approved the Scheme. Nobody came forward to oppose the Scheme or to challenge the conduct of the meetings. (Ex. 233/22).

After the order of the Court, the Liquidator of D.C.P.M. handed over the books of account and records of D.C.P.M. to Delhi Glass Works Ltd. Two months later a meeting of the Board of Directors of Delhi Glass Works Ltd., was held. It was attended by G. Ramchandran and M. L. Sodhani. At this meeting, the Secretary informed the Board that in pursuance of the order of the Court sanctioning the Scheme of Amalgamation of D.C.P.M. with this company, D. A. Patel, Voluntary Liquidator, had transferred the liabilities and assets, including the records of D.C.P.M., to this Company and that the records were useless and that most of them were of no utility.

The Directors passed the following resolution authorising the Secretary to destroy the records, (Ex. 604/29) :

“Resolved that Secretary be and is hereby directed to see that such of the aforesaid records, as may be needed for settling the claims of shareholders of the Transferor Company in terms of the order of the Court should be preserved as long as may be considered necessary by him and the unnecessary records may be disposed of by him as he may think proper.”

Thus the books of account of D.C.P.M. were destroyed by the Delhi Glass Works Ltd. and were consequently not among the records seized by the Special Police Establishment in November, 1953.

It is significant that D. A. Patel, who was appointed as Voluntary Liquidator of D.C.P.M., was also the Liquidator of the following companies which were under the control of R. Dalmia and were taken into voluntary liquidation between the years 1953—57.

Name of the Company	Date of Liquidation
1. Jaipur Agencies Ltd.	October, 1953
2. V. V. Ltd.	April, 1953
3. C. Lazarus & Co. Ltd.	July, 1953
4. Jaipur Traders Ltd.	October, 1953
5. Rashtriya Agencies Ltd.	August, 1953
6. Pepsu Trading Co. Ltd.	December, 1956
7. Vishwa Industries Ltd.	Do.
8. Rajasthan Udyog Private Ltd.	February, 1957
9. Premier Trading Corporation Pvt. Ltd.	December, 1953
10. Govan Brothers Private Ltd.	March, 1956
11. D. J. & Co. (Jind State) Ltd.	April, 1953

M. L. Sodhani also figured in the destruction of books and records of the following Scheduled Companies :—

- (a) D.C.P.M. By Delhi Glass Works
- (b) D. J. Airways By D. J. Aviation
- (c) S.S.B. & M.D.M. By South Asia Industry Private Ltd. (Formerly LECO).

In reply to the Statements of Matters served on, among others, D. A. Patel, Shanti Prasad Jain and J. Dalmia, they said as under :

D. A. Patel stated that the assets of D.C.P.M. were transferred to Delhi Glass Works Ltd. by the order of the District Judge, Delhi. He was not even a shareholder and had nothing to do with the decision on the

resolution for winding up the Company. He has further stated that he had nothing to do with the destruction of the books by Delhi Glass Works Ltd., as he was not connected with that company. The court having considered the scheme and then having sanctioned the same after approval of the shareholders of both the companies, he could not have any responsibility in the matter. As stated earlier he was liquidator for eleven more companies, including V. V. Ltd., as found from the records available to the Commission.

Shanti Prasad Jain & J. Dalmia stated that since the matter relates to a period subsequent to 31-5-1948, they were not concerned with the same and also that they had ceased to be Directors of the Company with effect from 1-11-47 and 3-11-47 respectively.

It will be seen from the above, that the pattern of converting a public limited company into a private limited company, taking the private limited company into voluntary liquidation, transferring its assets and liabilities to a sister company in pursuance of the scheme and later causing destruction of the books of account and records by the transferee company, has been followed in the case of D.C.P.M. as well, because R. Dalmia, had effective control over D.C.P.M. and was also its sole beneficiary. He was mainly responsible for putting an end to the corporate existence of D.C.P.M. and also for causing destruction of the records so as to avoid civil and/or criminal proceedings.



CHAPTER XVI RESPONSIBILITIES

We will now consider the individual responsibilities. Copies of the Statements of Matters relating to D.C.P.M. were served on all persons and companies who appeared to be associated with the various frauds and malpractices that we have dealt with in this volume and whom we thought should be afforded an opportunity of explaining the circumstances that appeared to be against them.

Of them, the following did not file any written statement in reply :

1. R. Dalmia.
2. Shital Prasad Jain.
3. P. N. Mehta.
4. P. S. Patke.
5. V. D. Agarwal.
6. S. L. Agarwal.
7. Smt. Rama Jain.
8. D. D. C.

The following gave no reply on the merits and only raised legal and technical objections :

1. M. K. Roy
2. S. N. Dudani
3. P. K. Roy
4. G. L. Chokhani
5. G. Ramachandran
6. R. P. Gurha
7. South Asia Industries
8. Allenberry & Co.
9. Bharat Union Agencies
10. Asia Udyog.

The two liquidators D. A. Patel and R. D. Agarwal did not reply on the merits. They said that there were no specific allegations against them and so there was nothing for them to answer.

Of those who did reply on the merits the following disclaimed responsibility in one way and another.

J. M. Raizada said that he did not recollect whether the Board was ever consulted about the investments and said that he did not remember having attended any meeting authorising the advances to Rashtriya Industries Ltd.

H. D. Bishnoi said that to the best of his knowledge no matter relating to the purchase and sale of investments was ever placed before any Board meeting that he attended. He was a Director from 17-9-1944 to 12-12-1949.

He made the following statement,

"The respondent begs to submit that he was a paid employee of Rohtas Industries Ltd., holding senior appointment. Therefore, he was mostly busy with his official work. D.C.P.M.'s affairs were managed by the Managing Director or the senior officers of the company and each branch of D.C.P.M. was being looked after by senior officers of the Company and as far as the Respondent remembers they were holding powers of attorneys or letters of authority. Branch accounts and papers were not sent to every Director but certified returns were taken as correct. The Respondent was a Director of the Company between 17-9-1944 to 12-12-1949. The shares that were registered in his name were not his property but he was holding them as *benami* for other companies or individuals connected with the D. J. Group. Whenever any accounts matter was referred to him, he sought the advice of senior officers of the Company."

On the question of Inter-company investments he said that to the best of his knowledge no matter relating to the purchase and sale of investments was ever placed before any Board meeting that he attended.

S. R. Srivastava pleaded that he joined the service of R. Dalmia about the middle of 1943, that he was co-opted a Director to D.C.P.M. from January 1949 and that he resigned in March 1952. According to him, he was appointed in response to an advertisement from R. Dalmia who needed a person well-versed in Sanskrit Philosophy. He was a Lecturer in Sanskrit for about 20 years in the University and specialised in Sanskrit Philosophy. His sole work was to read out the books on Indian Philosophy to R. Dalmia. Later along with that work, he was entrusted with superintendence over R. Dalmia's household management and was designated Household Secretary. He had no concern with the business matters.

Apart from his responsibility as a Director the main charge against him is that he received an advance of Rs. 7,500 through the New Delhi Office of D.C.P.M. when he was a Director. He denied this in his written statement. But in the absence of the books of D.C.P.M. we accept the statement of the Inspector at page 52 of his investigation report as secondary evidence. He said that the ledger of D.C.P.M., which was seen by him showed at page 341 that D.C.P.M. advanced a sum of Rs. 7,500 to S. R. Srivastava on 26-8-1949 and that it was repaid on 31-10-1949. We hold that that fact is proved.

Dummy Directors

Except for the members of the D. J. Group, the two liquidators, S. R. Srivastava and Shriyans Prasad Jain, the rest of the persons on whom we served our Statements of Matters have only been charged with responsibility because they were Directors. But we have called them dummies and, as they are not shown to have had any direct connection with any of the matters to which we have taken exception, all that we will say against them is that they did not adequately shoulder the responsibilities that are expected of Directors. But, as they were subservient, either to R. Dalmia or to one or other of the members of the D. J. Group, their share of the blame is small compared to that of those who were in real control. In fact, to concentrate the blame on these stool-pigeons would be to play the game

of those in real control. They took care to remain in the background so that they could evade responsibility and throw the blame on those who were put forward to shoulder the responsibility and the blame knowing that, circumstanced as many of them were, they could do little else than carry out their orders.

Also, in some cases, these dummies could not have been aware of the real purposes for which they were being used because it is not until the whole is pieced together that the real nature of the totality of the transactions can be realised. Looked at separately and bit by bit, most of the pieces of the total scheme appear innocent enough on the surface; and that is all that many of these dummies would have been shown. Accordingly, we do not intend to consider their defences in detail. Nearly all the matters that they have raised in their defence on the merits has been raised by one or other of those who acted behind the scenes and whom we consider to be really responsible. But before we deal with them we will take up the case against Shriyans Prasad Jain who was not a Director of D.C.P.M.

Syriyans Prasad Jain

Shriyans Prasad Jain said in his written statement that he was not a Director of D.C.P.M. at any time and so was not responsible for the management of its affairs. But that is not the reason for our serving him with the Statements of Matters in connection with D.C.P.M.

He is one of the five persons specifically named in the Notification and so we have to direct special attention to his activities and connection with these ten companies. One of the charges made against these five persons in the Notification is that they, together with their relatives, friends and employees brought about the malpractices into which we were directed to inquire. The result of our investigations is that, of the five named, Shriyans Prasad Jain and Shital Prasad Jain were not in control of the ten companies under investigation; but we find that they were used by the others to further the evil ends of those who were in control. In the matter of D.C.P.M. the part that Shriyans Prasad Jain played was this.

He was an employee of the company and not only received a high salary but in addition was given perquisites that totalled more than double his salary. Under the terms of his engagement he was to be paid a salary of Rs. 4,000 a month for a period of 25 years *free of income tax*. His salary and perquisites during the 20 months about which we have evidence, averaged over Rs. 9,442 a month. Then, his services are said to have been terminated prematurely and he was paid Rs. 7 lakhs compensation for what is said to have been an unexpired term of 19 years. We have charged him separately with this and have dealt with it in a separate Chapter.

So far as the other matters are concerned, the point is that, being a highly paid employee of D.C.P.M. he was made a Director of other companies which received advances from D.C.P.M. that we consider improper. It is true that we are not inquiring into the management of the other concerns as such but we have to consider the circumstances in which they were given these advances. Shriyans Prasad Jain has not denied the facts relating to these advances therefore, though he was not responsible as a Director for the improper advances, his connection with them has to be brought out in order to explain the total scheme under which R. Dalmia was able to perpetrate the frauds and other malpractices that we have dealt with in this volume.

We have not charged him with complicity in any but two of the mal-practices, but we have set out in our Statement of Matters the part that he played in the other matters. As he has not been charged with complicity in them it must be assumed that he was innocent of evil intent and that he had no knowledge that the transactions with which he was associated were fraudulent. But the fact that R. Dalmia paid the brother of his son-in-law a salary of Rs. 4,000 a month, and for a period gave him perquisites that average Rs. 5,442 in addition to his salary, and then got him appointed Director of certain banks with which he conducted the transactions that we have questioned, undoubtedly helped to smooth R. Dalmia's way and made it easier for him to carry out his frauds. There can be no doubt that it is easier to deal with a relation who is under a deep obligation to you than with a hard-headed independent stranger.

In his written statement Shriyans Prasad Jain said that,

"the only matters where he is specifically referred to in the Statement of Matters and therefore in respect of which he can be required to give explanation or elucidation are the following :—

- (1) Payment of compensation of Rs. 7 lacs to Shri Shriyans Prasad Jain referred to in Section B under heading of 'Disregard of Honest Commercial Practice' which is again referred to in Section D under the heading 'Fraud'; and
- (2) Unauthorised use of the sale proceeds of government securities which is referred to in Section C under the heading 'Fraud'."

We have charged him with two frauds and in the first of them made an alternative charge of disregard of honest commercial practice. The alternative charge is now dropped because we think the charge of fraud can be sustained in both cases.

The particulars that we gave about the first fraud include the following:—

- (1) that the letter appointing Shriyans Prasad Jain which purports to have been written on 11-10-1943 was ante-dated;
- (2) it was signed by a close relative, V. H. Dalmia, who, at that time, was only 19 years old and also by Shriyans Prasad Jain;
- (3) that the letter of appointment dated 11-10-1943 and the letter of termination dated 7-2-1950 were both deliberately destroyed though marked for identification by the Inspectors;
- (4) that the appointment was not approved by the Board of Directors.

The charges against him in this respect are therefore clear and so are the particulars. We have not travelled beyond them. The rest of the matters to which we have referred in regard to the payment of compensation are evidence to prove the main charge and to establish the particulars.

In the second charge also the charge is clear and the particulars sufficient.

We hold that he was a party to both sets of frauds.

R. Dalmia

So far as R. Dalmia is concerned, there is ample evidence to prove that he was in real and effective control of D.C.P.M. and of all the ten companies we are investigating, even during the time that Shanti Prasad Jain and J. Dalmia were admittedly associated with him as members of the D. J. Group. This evidence discloses that none of the transactions that we have dealt with in this volume could have been carried out without his knowledge and consent, and in most cases without his orders. We believe that evidence, especially as (1) he has not controverted the facts by filing a written statement, and (2) as Counsel for Shanti Prasad Jain and J. Dalmia said much the same thing in their arguments though there were attempts to shield him at the earlier stages. We, therefore, hold him responsible throughout.

Shanti Prasad Jain and J. Dalmia

These two persons raised much the same defences, so we will consider them together.

They admitted that the Group functioned as a Group till 31-5-1948, and, as they were in charge as Deputy Managing Director and Managing Director down to November 1947 it is evident that their connection with the Company was a direct one up to November 1947.

After May 1948, there is nothing to show that they were in direct management or control of D.C.P.M., but there is material to show that they were still using their influence to benefit, either companies under the control of the D. J. Group, or of one or other of themselves, through D.C.P.M.

In our opinion they can only be accounted responsible for the following transactions examined in this volume in the way set out below :

First as Directors up to November 1947. We have no material to indicate that they knew of the transactions that we are about to enumerate or that they sanctioned them, because the books of the Company that would have shown this have been destroyed. Shanti Prasad Jain and J. Dalmia were not responsible for these destructions so we can do no more than say that they must have known about the general policy that prompted the transactions we are about to set out because they alone among the Directors were not dummies and because they have admitted group responsibility up to 31-5-1948.

Borrowings by D.C.P.M.

We have set out the total borrowings at the end of five financial years. Only the first set totalling Rs. 3,58,92,289 are before November 1947; so Shanti Prasad Jain and J. Dalmia have no responsibility as directors for any of the others.

But Shanti Prasad Jain enters into this in another way. Out of the Rs. 3,58,92,289, sums totalling Rs. 1,06,73,663 were borrowed from the Bharat Bank. The General Manager of the Bank objected because he said the security was not enough. But he was overruled. Shanti Prasad Jain

was then a Director of the Bharat Bank as well as being Managing Director of D.C.P.M. We infer from this that his responsibility in the case of the borrowings from the Bharat Bank was a most direct one. We do not think he could have been ignorant of the fact that the General Manager of the Bank had objected to the loans and that he was overruled.

The second set of borrowings are up to 28-2-1948 and total Rs. 5,09,05,289. The responsibility of Shanti Prasad Jain and J. Dalmia for this is vicarious as members of the D. J. Group.

Shanti Prasad Jain was a Director of Bharat Insurance Co. from 12-2-42 to 4-12-48 and J. Dalmia from 1-8-48 to 19-3-49. Shanti Prasad Jain would therefore be responsible as a Director for the loan during the year ended 28-2-48 and J. Dalmia for the loan during the year ended 28-2-49. We have, however, no material to show their direct connection with the grant of these loans.

We are unable to hold them responsible for the rest of the borrowings.

Lendings by D.C.P.M.

In the moneys lent by D.C.P.M. to others Shanti Prasad Jain and J. Dalmia only come into the picture in respect of the first lot amounting to Rs. 2,65,59,383; and as this was in the D.C.P.M.'s financial year ending 28-2-1948 their responsibility is a vicarious one as members of the D. J. Group. J. Dalmia received loans from D.C.P.M. up to Rs. 30,94,038 as on 29-2-48 which increased to Rs. 87,49,499 by August 1948. The account of D.C.P.M. in the books of J. Dalmia was closed by transferring the amount from D.C.P.M.'s account to Vyapari Ltd. In the absence of books of accounts of D.C.P.M., it is not known how the account of Vyapari Ltd. was settled.

Similarly Shanti Prasad Jain's companies Ashoka Marketing Co. Ltd., and Ashoka Agencies Ltd., got the benefit of loans from D.C.P.M.

2323 Vehicles and Pipe Lines & Fittings

As regards the 2323 vehicles and the transfer of the Pipe Lines and Fittings, we have examined the position at length in Volumes III & IV; so will not repeat ourselves here.

Fraudulent use of Government Securities

We have no evidence to connect either Shanti Prasad Jain or J. Dalmia directly with the transactions relating to this. In any case, the only instances of unauthorised use with which they can be said to be connected are the ones relating to the Bharat Bank between 31-12-1946 and 5-2-1947. They total Rs. 1,09,03,579-11-0. As they were Directors during that period they are responsible as such.

Shanti Prasad Jain is, however, also connected with the transaction relating to the Dalmia Provident Fund in another capacity. The sum involved was Rs. 2,96,852. He comes into the picture here as a trustee

of the Dalmia Provident Fund. But there is nothing to show that he authorised the misuse of the sale proceeds by D.C.P.M.; so we exonerate him from complicity in this.

Rs. 7 lacs Compensation to Shriyans Prasad Jain

Shanti Prasad Jain's part in this is a curious one. We have not challenged the propriety of the appointment of Shriyans Prasad Jain though we think the terms were unduly generous. What we have said is that the stipulation from a 25-year period of service and the stipulation for payment of compensation and the manner in which it is to be calculated, were not part of the original contract of service. These terms were fraudulently introduced at a later date and the letter that purports to be the letter of appointment was ante-dated. Neither Shanti Prasad Jain nor J. Dalmia were connected with the Company at that date.

Had the matter rested there Shanti Prasad Jain would not have been dragged into this at all. But in the witness box Shanti Prasad Jain said that the terms to which we have taken exception formed part of the original contract. We are compelled to disbelieve him. As we disbelieve him we cannot implicate him in the frauds. But, we will observe that if we thought he was telling the truth then we would have taken strong objection to the terms of the appointment.

Manipulation of Accounts resulting in loss of Rs. 12 Lakhs in Share Transaction

While Shanti Prasad Jain cannot be directly held responsible for the ante-dating of the transaction, there is evidence to show that the 500 Dharangdara Trading Company's shares that Shanti Prasad Jain bought were bought at a low rate. This resulted in lowering the profits of D.C.P.M. by a sum of Rs. 12,00,000.

The case of Shanti Prasad Jain about this is that this was part of the re-adjustments consequent on the dissolution of 31-5-1948. Even if that is true it would not justify a transfer at low rates. The proper market price should have been paid. The artificial rates that were settled were fixed with a view to reduce the taxable profits of D.C.P.M. Shanti Prasad Jain was definitely responsible for this transaction as he was a party to it.

Other Manipulations

The same considerations apply to the sale of the following investments to the following companies that were controlled by Shanti Prasad Jain up to 31-8-1948:

- (i) 6,065 Lothian Jute shares
- (ii) 36,255 Bharat Colliery shares
- (iii) 5,679 Ordinary Albion Jute shares

The same considerations also apply to the sale of 73,900 shares of Dalmia Cement to J. Dalmia.

It is true the dates travel three months beyond 31-5-1948 but that is the nearest that we have been able to get in the absence of D.C.P.M.'s books.

S.S.B. Mills & M.D.M. Co. Ltd.

We have examined this at length in Volume VI.

We do not hold either Shanti Prasad Jain or J. Dalmia responsible for any other matters dealt with in this volume.

(VIVIAN BOSE) (V. R. SEN) (N. R. MODY) (S. C. CHAUDHURI)

New Delhi
15-6-62

New Delhi
15-6-62

Bombay
16-6-62

New Delhi
15-6-62

VOLUME VI
PART I
SIR WSHAPURJI BROACHA
MILLS Ltd.
and
MADHOJI DHARAMSI
MANUFACTURING CO. LTD.



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CHAPTER I

INTRODUCTORY

The S.S.B. Mills and the M.D.M. Co. were two flourishing mill concerns in the year 1946 with large reserves and liquid resources. The former was incorporated as a public limited company during the First World War and the latter, even earlier, in the nineties of the last century.

The financial position of the two mills is disclosed by their balance sheets as on 31-3-46. That of S.S.B. Mills is Ex. 487. It shows that the S.S.B. Mills had,

	Rs.
(a) Paid-up capital	85,84,398
(b) Reserve Fund & Balance of Profit and Loss account	87,15,652
(c) Investments, cash and bank balances	87,42,792
(d) It made a net profit of Rs. 16,23,059 after deduction of tax during the year-ending 31-3-46 after charging Rs. 5,50,000 as depreciation.	

The balance sheet of the M.D.M. Co. Ex. 606. It shows the following,

	Rs.
(a) Paid-up capital	30,08,300
(b) Reserve Fund & Balance of Profit & Loss account	32,82,195
(c) Investments, cash and bank balances	43,61,557
(d) It made a net profit of Rs. 8,69,844 after deduction of tax during the year-ending 31-3-46 after charging Rs. 1,75,000 as depreciation.	

This prosperity attracted the attention of the D. J. Group and they proceeded to acquire control of these two concerns.

At this time the control of the two mills was in the hands of the Provident Investment Co. On 14-9-46 the Dalmia Investment Co. (a D. J. Group concern) made an offer to the Provident Investment Co. to acquire their shares in the two mills.

After the acquisition of control the funds and resources of these two concerns were diverted to companies within the control of the D. J. Group and later of R. Dalmia and were used for their purposes and also for the purposes of acquiring or retaining control of other companies.

One of the ways in which these funds were diverted was by payment of compensation to limited liability companies under the control of R. Dalmia for supposed breaches of managing and selling agency agreements. This device in particular was resorted to with a view to withdraw the large accumulated Reserves and profits of the mill companies without having to pay income-tax thereon. During the relevant period receipt of compensation was not liable to tax.

After this was done the plan was to take the two companies into voluntary liquidation and destroy their books and records.



CHAPTER II

ACQUISITION OF CONTROL

Control was acquired by buying up the shares of these two companies from the Provident Investment Co. We set out in detail how the purchases were affected in our statements of matters. As those facts have not been disputed we need not repeat those details here. It will be enough to summarise the position.

In the S.S.B. Mills all its 82,036 Conversion Shares of Rs. 100 each were held by companies under the control of the D. J. Group and then R. Dalmia, from 19-10-1946 to 31-12-1951.

The total number of deferred shares of Rs. 2-8-0 each was 1,52,319. Out of them, R. Dalmia controlled the following from time to time (Ex. 575/5).

On 19-10-1946	.. ..	16,059 shares
In 1948	.. ..	61,804 shares
In 1950	.. ..	71,685 shares
On 31-12-1951	.. ..	92,133 shares

(the date of liquidation).

The position in the M.D.M. Co. was as below:

All the 28,328 shares Conversion Shares of Rs. 100 each were held by companies under the control of the D. J. Group and then of R. Dalmia between 9-10-1946 and 31-12-1952 (Ex. 365).

The total number of deferred shares of Rs. 5 each was 35,100. Of these R. Dalmia controlled the following,

In 1948	.. ..	8,975 shares (Ex. 519)
In 1950	.. ..	11,030 shares (Ex. 521)
On 31-12-1951	.. ..	13,252 shares (Ex. 506)

(the date of liquidation).

R. Dalmia said in his affidavit dated 10-4-1957 in the Bombay High Court that the *D. J. Group* owned the shares of the S.S.B. Mills and M.D.M. Co. and was exercising control, such as the appointment of Managing agents, down to 1950 to 1952. He said,

"I say that shares of more than 95% of the paid-up capital of the S.S.B. Mills and M.D.M. Co. were held by the said *group*."

and

"It is difficult to understand what is wrong if a company having acquired 95% of the shares of the said companies this *group* appointed its Managing Agents."

The two managing agency companies were not appointed till July 1950. Lastly, speaking of the awards, he said,

"No question of any loss having been suffered by the investing public could possibly arise in the cases when shares of the face value of more than 95% were with the said *group*."

The awards were not given till 1952, so, according to R. Dalmia, the group was still in existence *as a group* down to 1952.

Each of these two companies had the following clause in its Articles of Association,

"On its show of hands every member present in person shall have one vote and upon poll every member present in person or by proxy shall have one vote for every deferred share held by him and ten votes for every conversion share held by him".

The D. J. Group and later R. Dalmia, thus obtained control of both the mill companies through the share holdings.

Direct control was also exercised by the D. J. Group as follows:

First, by members of the D. J. Group.

- (1) *R. Dalmia* controlled the companies through their respective managing agencies of which, *in each case, he was the sole beneficiary.*

In the case of the S.S.B. Mills, the managing agents were the Bharat Union Agencies. They were appointed managing agents on 1-7-50.

In the case of the M.D.M. Co. the managing agents were *Vastra Vyavasaya Ltd.*, who were also appointed on the same date, 1-7-50.

When the two cases are examined side by side the pattern emerges clearly.

- (2) *Shanti Prasad Jain* was one of the first directors of the two companies after the D. J. Group acquired and retained control. He was there from 19-10-46 till 29-10-47.
- (3) *J. Dalmia* was also one of the first directors after the D. J. Group acquired control. He was a director in both the companies from 19-10-46 to 28-10-47.

In addition, the D. J. Group had their relatives as directors as follows,

V. H. Dalmia son of *J. D. Dalmia*, was a director in both companies from 19-10-46 to 28-10-47; and

Shriyans Prasad Jain, a brother of *Shanti Prasad Jain*, was a director from 19-10-46 to 7-12-49. He signed the letters (Ex. 365) to the Provident Investment Co. on behalf of the *Dalmia Investment*.

Investment Co. regarding the purchase of the shares of the two companies. The rest of the directors were dummies. They are the following. We will first set out the five who were common to both companies. They are,

G. L. Chokhani

He is related to *R. Dalmia* and held a Power of Attorney from him (Ex. 439) and (Ex. 491/86). He was the manager of the Bombay branch of *D.C.P.M.* (Ex. 844) and was the Secretary of the *Bharat Union Agencies*.

He was a director of the S.S.B. Mills from 18-12-46 to 16-3-47 and of the M.D.M. Co. from 24-2-47 (the date of the return) onwards. (Exs. 487 and 506).

J. P. Jain

He was the manager of the Bombay branch of Allenberry and was a director of the S.S.B. Mills from 18-12-46 to 1-11-50, and of the M.D.M. Co. from 20-1-47 to 15-3-57 and again from 6-12-49 to 1-11-50. (Exs. 487, 367 & 506).

S. S. L. Chordia

He is the father-in-law of R. Dalmia and was a director of the S.S.B. Mills from 16-10-47 to 22-7-50 and of the M.D.M. Co. from 11-3-50 onwards. (Exs. 487 & 506).

B. L. Chokhani

He is a brother of G. L. Chokhani and is also related to R. Dalmia. He was a director of the S.S.B. Mills from 1-11-50 and of the M.D.M. Co. from 11-4-50. (Exs. 487 & 506).

Mahabir Prasad Modi

Director from 4-11-47 to 27-7-48.

Sister's son of R. Dalmia (Ex. 487).

The remaining Directors were—

S.S.B. Mills

K. B. L. Chordia

Director from 21-7-50 onwards (Ex. 487) Secretary, S.S.B. Mills Ltd during 1948—50. Brother-in-law of R. Dalmia (wife's brother).

Manmohan Lal Raizada

Director from 31-8-48 onwards (Ex. 487) Brother of B. L. Raizada, son-in-law of R. Dalmia's sister.

V. S. Chordia (Ex. 487) Director from 6-12-49 onwards brother-in-law (wife's brother) of R. Dalmia.

M.D.M. Co.

G. L. Chokhani

Director from 24-2-47 (date of return) onwards (Ex. 506) related to R. Dalmia. Held Power of Attorney of R. Dalmia, Manager, D.C.P.M. Bombay Branch (Exs. 844, 439, 491/6) Secretary, Bharat Union Agencies.

R. L. Chordia

Director from 16-10-47 to 25-2-50 (Ex. 506) Brother-in-law (wife's brother) of R. Dalmia.

Jagmohan Lal Raizada

Director from 26-8-1948 to 7-1-1949 (Ex. 506) Brother of B. L. Raizada, son-in-law of R. Dalmia's sister.

Brijmohan Lal Raizada

Director from 9-1-1947 onwards (Ex. 73) Son-in-law of R. Dalmia's sister. Appointed as a director under the instructions of R. Dalmia and J. Dalmia. Attended only one meeting and said that he did not know anything, about the compensation paid to Vastra Vyayasaya Ltd. and D.C.P.M. Ltd. for the termination of the Managing Agency and the Selling Agency.

The manner in which the control was acquired was as follows: On or about 14-9-46 Shriyans Prasad Jain made an offer on behalf of the Dalmia Investment Co. (a D. J. Group concern) to the Provident Investment Co. to buy,

- (a) 75,212 Conversion shares of the S.S.B. Mills at Rs. 300 a share and such deferred shares as may be offered at Rs. 7/8 a share; and
- (b) 28,328 Conversion shares of the M.D.M. Co. at Rs. 500 a share and such deferred shares as may be offered at Rs. 25 a share. This offer is Ex. 365.

The Provident Investment Co. accepted the offer and communicated its acceptance to the Dalmia Investment Co. on or about 30-9-48 (Ex. 365).

On 2-10-46 earnest money was paid from the funds of the Dalmia Investment Co. to the extent of Rs. 30 lacs for S.S.B. Mills and Rs. 20 lacs for M.D.M. Co. Ltd., to the Provident Investment Co. Ltd. (Ex. 365).

On the same day Shriyans Prasad Jain, on behalf of the Dalmia Investment Co. Ltd., addressed a letter to the Provident Co. Ltd., requesting it to co-opt Shriyans Prasad Jain and J. Dalmia as Directors and to transfer the managing agency in the name of D.C.P.M., Dalmianagar. (Ex. 365).

In partial modification of the arrangement, on or about 7th October, 1946, another letter (Ex. 365) was addressed by Shriyans Prasad Jain on behalf of Dalmia Investment Co. Ltd., to the Provident Investment Co. Ltd. saying—

- (a) that instead of transferring the managing agency to D.C.P.M. the then managing agents would resign;
- (b) that the following four persons will be appointed directors of the two mills and thereafter all the then existing directors would tender their resignation:—

Shriyans Prasad Jain
J. Dalmia
Shanti Prasad Jain and
V. H. Dalmia;

- (c) that the qualification shares in the name of the above will be transferred and the balance of the shares will be delivered along with the transfer deeds;

(d) that a circular should be addressed to the shareholders of both mills informing them that the Provident Investment Co. had resigned as Managing Agents and that the Dalmia Investment Co. was willing to buy,

(i) the deferred shares of the S.S.B. Mills from any one who wanted to sell at Rs. 7/8 a share and

(ii) the deferred shares of the M.D.M. Co. at Rs. 25 a share.

On or about 9th October, 1946, a circular to this effect was issued to the shareholders by the Provident Investment Co. Ltd. (Ex. 365).

Payment of Rs. 2,26,84,042 in respect of 75,212 Conversion shares of Rs. 100 each @ Rs. 300 per share and 16,059 Deferred Shares of Rs. 2/8 @ Rs. 7/7 per share was made by Dalmia Investment Co. Ltd. and D.C.P.M. on the following dates:

By Dalmia Investment Co. Ltd.

	Rs.
2nd October, 1946, Earnest Money	30,00,000
<i>By D.C.P.M.</i>	
18th October, 1946, 2 cheques	1,70,00,000
21st October, 1946, by cheque	25,63,600
21st October, 1946, by cheque	1,20,442
	<hr/> 2,26,84,042

Payment of Rs. 1,41,66,000 in respect of 28,328 Conversion shares of Rs. 100 each @ Rs. 500 per share and 80 Deferred shares of Rs. 5 each @ Rs. 25 per share was made by Dalmia Investment Co. Ltd., and D.C.P.M. on the following dates:—

	Rs.
<i>By Dalmia Investment Co. Ltd.</i>	
2nd October, 1946, Earnest Money	20,00,000
<i>By D.C.P.M.</i>	
21st October, 1946, 3 cheques	1,21,66,000
	<hr/> 1,41,66,000

The receipts for the above money paid to the Provident Investment Co. Limited were issued in the name of Dalmia Investment Co. Ltd. by Provident Investment Co. Ltd. (Ex. 365).

The balance of 6,824 (82,036—75,212) Conversion Shares was held by the M.D.M. Co., the control of which was also simultaneously acquired by the D. J. Group. (Ex. 515).

The Provident Investment Co. Ltd. transferred Rs. 10,63,529 as detailed below to D.C.P.M. in accordance with the terms and conditions contained in the letter of 14th September, 1946:—(Ex. 849).

(i) Managing agency commission for the year ending 31st March 1946, 3,11,409

(ii) Dividend on 75,212 Conversion Shares for the year ending 31st March, 1946, 7,52,120

10,63,529

The Provident Investment Co. Ltd. transferred Rs. 4,69,970 as detailed below to D.C.P.M. as per the terms and conditions contained in the letter of 14th September, 1946:—

	Rs.
(a) Managing agency Commission for the year ending 31st March, 1946 (Ex. 365)	1,80,690
(b) Dividend on 28,328 Conversion Shares for the year ending 31st March, 1946 (Ex. 849)	2,83,280
	<u>4,69,970</u>

Within a few months of the acquisition, D.C.P.M. transferred a large number of Conversion Shares of S.S.B. Mills Ltd., acquired from the Provident Investment Co. Ltd., to the following companies in which the investing public and the policy holders were substantially interested.

		Rs.
Bharat Insurance Ltd.	21,460 shares	63,31,400
Bharat Fire & General Insurance Co. Ltd.	3,550 shares	10,17,963
and LESCO	18,700 shares	54,44,000
	TOTAL	<u>1,27,93,363</u>

Funds to the extent of Rs. 1,27,93,363 came from the public limited companies to acquire control of S.S.B. Mills Limited.

Similarly D.C.P.M. transferred a large number of conversion shares of Madhowji Dharamsi Manufacturing Co. Ltd., acquired from the Provident Investment Co. Ltd., to the following companies in which the investing public and the policyholders were substantially interested:—

		Rs.
Bharat Insurance Ltd.	4,600 shares	23,00,000
Bharat Fire & General Insurance Co. Ltd.	1,500 shares	7,50,000
and LESCO	5,200 shares	25,48,000
		<u>55,98,000</u>

(Exs. 346, 848 and 505/121)

Funds to the extent of Rs. 55,98,000 came from the public limited companies to acquired control of the Madhowji Dharamsi Manufacturing Co. Ltd.

12,000 Conversion Shares of S.S.B. Mills and 6,000 Conversion Shares of M.D.M. Co were registered in the name of R. Dalmia (Exs. 515 to 517). These shares were mortgaged by R. Dalmia with the Central Bank of India for a sum of Rs. 25 lacs. (Ex. 503). The amount of Rs. 25 lakhs was received by D.C.P.M. and was utilised to reduce the overdraft with the Bharat Bank Ltd., Bombay. on account of the heavy payments to the Provident Investment Co. Ltd., (Ex. 602).

CHAPTER III

ABUSE OF CONTROL

Within a few days of the acquisition of control the S.S.B. Mills pledged its finished goods with the Bharat Bank for Rs. 52 lacs and the M.D.M. Co. for Rs. 28 lacs (Exs. 502 and 503); and these two sums of Rs. 52 lacs and Rs. 28 lacs were advanced to D.C.P.M. to reduce its heavy overdraft with the Bharat Bank, on overdraft that resulted from payment of money to the Provident Investment Co. for acquiring the very shares of the S.S.B. Mills and the M.D.M. Co.

In addition to pledging the finished goods, 12,000 shares of S.S.B. and 6,000 shares of M. D. M. registered in the name of R. Dalmia were also mortgaged with the Central Bank of India for a sum of Rs. 25 lacs. The amount of Rs. 25 lacs was received by D.C.P.M. and was similarly utilised to reduce the overdraft with the Bharat Bank Ltd., Bombay, on account of the heavy payments made (by D.C.P.M.) to the Provident Investment Co., Ltd., (Exs. 515 to 521, 502, 503 and 602).

It was not necessary for the M. D. M. Co. and the S. S. B. Mills to mortgage their finished goods as at that time they were not in immediate need of funds for meeting their normal business requirements.

From October, 1946 (i.e. after the Mills companies were acquired) they were made to advance to D.C.P.M. large sums of moneys from time to time. The following are the balances of the amounts due by D.C.P.M. to S.S.B. and M.D.M. at the close of the financial years of D.C.P.M.:—

Dates	S.S.B.	M.D.M.	Ex. No.
29-2-48	91,00,869-6-3	52,04,148-7-6	496
28-2-49	1,76,53,608-12-10	74,61,053-2-6	496
28-2-50	1,40,81,590-14-6	63,21,059-0-0	495
28-2-51	2,11,58,495-8-9	1,13,55,936-10-3	238-B
29-2-52	1,84,02,512-3-0	84,81,828-11-2	458

Over and above these advances to D.C.P.M., M. D. M. and S. S. B. also invested in Preference Shares on Bennett Coleman & Co. Ltd., a private limited company of the D. J. Group, amounts to the extent of Rs. 90,60,000 (Exs. 487 & 506).

As on 28-2-51, the investments made by M. D. M. and S. S. B. in the concerns under the control of R. Dalmia, were as under:—

<i>MDM:</i> Advance to D.C.P.M.	1,13,55,937	Ex. 238-B
Investment in the shares of Bennett Coleman & Co. ..	37,67,500	Ex. 506
Investment in the share of LESCO	9,10,000	Ex. 501
	<u>1,60,33,437</u>	
<i>SSB:</i> Advance to D.C.P.M.	2,11,96,600	Ex. 238-B
Investment in the shares of Bennett Coleman & Co. ..	52,92,500	Ex. 487
	<u>2,64,89,100</u>	

Thus the total resources released from the assets of M. D. M. Co. Ltd., and S. S. B. Mills Ltd., were in excess of the amounts invested by the

D. J. Group to acquire control of these two companies by Rs. 18,67,437 in the case of M. D. M. Co. Ltd., and by Rs. 38,05,058 in the case of S. S. B. Mills as shown below:

		Rs.
MDM:	Amount paid for acquisition of shares	1,41,66,000
	Amount withdrawn from the funds of MDM	1,60,33,437
SSB:	Amount paid for acquisition of shares	2,26,84,042
	Amounts withdrawn from the funds of SSB	2,64,89,100

D. C. P. M. was appointed in October, 1948 the sole selling agents of M. D. M. and S. S. B. Ltd. for a period of 10 years (Exs. 839 & 840). Thereafter, on account of purported breaches of the Selling Agency Agreements D. C. P. M. was paid by way of compensation Rs. 17,80,000 by M. D. M. and Rs. 29,10,000 by S. S. B.

Similarly, B. U. A. and V. V. Ltd., private limited companies under the control of R. Dalmia, were fraudulently and collusively appointed as Managing Agents of S. S. B. and M. D. M. in July, 1950 (Exs. 538 and 841) and immediately thereafter a breach was caused to be made in the Managing Agency Agreement and compensation amounting to Rs. 46,80,000 in the case of M. D. M. and Rs. 73,10,000 in the case of S. S. B. were mutually settled.

By this fraudulent device large amounts, making up a total of Rs. 1,66,80,000 were withdrawn from the accumulated reserves of the two mill companies. Since the amounts were paid out as compensation for the breach of the agreements and, as such compensation was not liable to tax at that time, the persons concerned got the benefit of these large amounts without having to pay any tax on them.

Incidentally, as these payments of compensation would have been debited in the Revenue Account of the mill companies as items of business expenditure, their taxable profits would also have been correspondingly reduced.

The amounts of the Selling and Managing Agency compensations were in the first instance adjusted to reduce the indebtedness of D.C.P.M. to these companies.

After D. C. P. M. had been given credit to the extent of Rs. 46,90,000 in respect of payment of compensation for the breach of the selling agency and Rs. 54,00,000 as part payment of compensation payable to B. U. A. and V. V. Ltd. for the breach of the managing agency, making up a total of over Rs. 1 crore, the two mill companies were taken into voluntary liquidation on 31st December, 1952.

The assets and liabilities of the two mills were then transferred by the liquidators to South Asia Industries Ltd., (formerly known as Lahore Electric Supply Co. Ltd.) in May, 1953 pursuant to a Scheme of Arrangement under Section 208 C of the Indian Companies' Act, 1913. South Asia Industries Ltd. (which was then under the full control of R. Dalmia), authorised, by a Board Resolution passed on 25th May, 1953, destruction of such books and records of these two companies as were not required for settling the claims of the shareholders. Under the terms of the Scheme the books were accordingly destroyed.

The two mill companies, S. S. B. Mills Ltd. and M. D. M. Co. Ltd., were finally dissolved three months after the presentation of the final liquidation accounts on 1-2-54.

SELLING AGENCY AGREEMENTS

We now turn to another of R. Dalmia's ingenious devices. He made these two public limited companies to enter into selling agency agreements with D.C.P.M. for a long term and then, soon after the agreements, deliberately brought about a breach of the agreements and made the public companies pay large sums of money as compensation. He did the same with the managing agency agreements; but we will examine that in the next chapter.

The S.S.B. Mills and M.D.M. Co. Ltd. were made to pay compensation to D.C.P.M. amounting to Rs. 29,100,000 (Ex. 241) and Rs. 17,80,000 (Ex. 242) respectively for the breach of their respective selling agency agreements. The payment of compensation to D.C.P.M. by these two companies lacked good faith and could not be justified on any normal business because—

- (i) the object was to evade and or avoid proper income-tax liability on the part of the two mill companies in respect of the amounts paid as compensation to D.C.P.M.
- (ii) enable the recipient company, namely, D.C.P.M. to acquire large amounts of compensation free of tax; and
- (iii) to reduce the indebtedness of D.C.P.M. to the mill companies and eventually to benefit R. Dalmia.

The above payments resulted in a loss of Rs. 29,10,000 to S.S.B. Mills and Rs. 17,80,000 to M. D. M. Co. Ltd., being the amounts of compensation paid. There was a loss to the investing public to the extent of Rs. 51,507 in the case of S. S. B. Mills and Rs. 64,614 in the case of M. D. M. Co. Ltd. There was also loss of revenue to Government in the form of tax of not less than Rs. 6,99,268 and Rs. 5,31,180 in respect of S. S. B. Mills and M. D. M. Co. Ltd. respectively. The gain to D.C.P.M. was the amount of compensation received free of tax from the two mill companies. It may also be mentioned that the loss to the exchequer would have constituted a gain in the hands of the person or persons beneficially interested in these companies.

We will now see how this was done.

Two years after acquiring control of the S. S. B. Mills and M. D. M. Co. Ltd., D.C.P.M., a company under the control of R. Dalmia, was appointed as selling agents of these two companies under agreements dated 29-10-48 for a period of 10 years (Ex. 491/220, Ex. 491/223, Exs. 839 & 840). In consideration of its services D.C.P.M. was to be paid commission at the rate of 2½ per cent on the net sale proceeds (Ex. 491/220, Ex. 491/223 & Ex. 839/480).

One of the conditions of the selling agency agreement was that if and when the two mills transferred their business, they were to make it a condition of the transfer that D.C.P.M. should be appointed as distributors to the transferee company on the same terms and conditions on which it was working for the two mill companies (Ex. 491/220 & 491/223, Exs. 839 and 840).

The books of account of the two mill companies were not available to the Commission and so it was not possible to determine the exact amount of selling agency commission paid to D.C.P.M. by S. S. B. and M. D. M. These two companies, however, entered into agreements with Ram Sahai Mull More Ltd., on 27th October, 1950 for the sale of their undertakings, land, building, plant and machinery (Ex. 482 and Ex. 838).

On 20th February, 1951, D. C. P. M. claimed compensation of Rs. 34,41,347 and Rs. 21,05,194 respectively from S. S. B. and M. D. M. on the ground that the agreements entered into with Ram Sahai Mull More Ltd., in respect of the sales of the undertakings, caused breaches of the selling agency agreements. (Ex. 491/220 & Ex. 491/223).

On 24th February, 1951, S. S. B. and M. D. M. advised D.C.P.M. to depute a director to discuss and settle this matter with the representatives of the companies (Ex. 491/221 and Ex. 491/224).

On 28th February, 1951, B. L. Chokhani on behalf of S. S. B. Mills and M. D. M. Co. Ltd., and P. S. Patke on behalf of D.C.P.M. met and settled the amount of compensation payable to D.C.P.M. On behalf of S. S. B. and M.D.M., B. L. Chokhani accepted the claim made by D.C.P.M. and agreed that a breach of the agreement had been committed and that S.S.B. and M.D.M. were liable to pay damages. P. S. Patke and B.L. Chokhani mutually settled the amount of compensation payable to D.C.P.M. at Rs. 29,10,000 and Rs. 17,80,000 by S. S. B. and M. D. M. respectively (Ex. 241 and Ex. 242).

During the relevant period P. S. Patke was private secretary to R. Dalmia (W. 7—P. 44) and B. L. Chokhani, who was the younger brother of G. L. Chokhani, was a relative of R. Dalmia. B. L. Chokhani had no interest in the two mill companies and he was not in a position to act independently.

Payment of compensation by the two mill companies to D.C.P.M. as settled by B. L. Chokhani and P. S. Patke was accepted by the mill companies as well as by D.C.P.M. and the mill companies accordingly gave credits to this extent to D.C.P.M. on 28th February, 1951, (Exs. 141 & 242. and 501 p. 13).

On that date, i.e., 28th February, 1951, D.C.P.M. was indebted to S.S.B. Mills and M.D.M. Co. Ltd., to the extent of Rs. 2,11,58,495-8-9 and Rs. 1,13,55,936-10-0 (Ex. 238-B).

On 31st December, 1951, S.S.B. Mills and M.D.M Co. Ltd., were taken into voluntary liquidation and V. Shanker Iyer was appointed as their Liquidator (Ex. 487 and 506). Later R. D. Joshi and D. D. Joshi were appointed as Liquidators (Exs. 487 and 506). The Liquidators referred the matter of payment of compensation to D.C.P.M. to the Arbitrators, M/s. Krishnaswamy Iyengar and Asanand Kumar. The Arbitrators gave an award upholding the settlement under which both S.S.B. and M.D.M. had agreed to pay D.C.P.M. the sums of Rs. 289,100,000 and Rs. 17,80,000. On applications made to the Bombay High Court for confirmation of the awards they were confirmed and a decree was passed.

These settlements of compensation cannot be justified on any normal business grounds. Further, the collusive nature of the transaction is clear from the fact that the persons who settled the amount of compensation were

subservient to R. Dalmia and were not in a position to act independently. Also R. Dalmia was in effective control of both the mill companies.

It was not in the interest of the mill companies, in which the investing public was both directly and indirectly interested, to pay such heavy compensation to D.C.P.M. It was also not in the interest of the two mill companies to sell their undertakings which simultaneously brought about large liabilities of Rs. 1,02,20,000 and Rs. 64,60,000 to S.S.B. and M.D.M. on account of the breaches of the selling and managing agency agreements.

The compensation for breach of the selling agency agreement could have been avoided if at the time of the sale of the undertakings the mill companies had made it a condition that D.C.P.M. would continue to act as selling agents for the residual period of the agreement.

It was contended in argument that we cannot go behind the award and the decree. Of course, the award cannot be set aside or varied by us. It is final as between the parties. But awards are as much open to criticism and analysis as are judgments and decrees. It is not only our right, in common with newspapers, journals and any member of the public, to bring fair criticism to bear upon judgments and awards, but, in view of our terms of reference, it is our statutory duty to do so in all matters relevant to this inquiry.

The investing public was interested in S.S.B. and M.D.M. on the date of the breach of the agreement *i.e.*, 27-10-50 and also on the date of the settlement of compensation, *viz.*, 28-2-51 (Exs. 838, 842, 241 & 242). This will be seen from the following:—

S.S.B.

On 27-10-50 the date of the breach of the selling agency agreement :

(A) Conversion shares

- (i) Investing public and policyholders were interested in the Bharat Insurance Co. which held 21,000 Conversion shares, *i.e.*, 25% of S.S.B.'s shares (Ex. 366).
- (ii) Investing public was also interested through:—
 - (a) D.J.A. which held 21,800 conversion shares *i.e.*, 25% of S.S.B.'s capital (Ex. 26/41). In D.J.A. investing public was interested up to 80% hence the investing public was interested up to 20% in S.S.B. Mills.
 - (b) D.D.C. Ltd., which held 2,700 conversion shares *i.e.*, 3.2% of S.S.B.'s capital (Ex. 441/28).
 - (c) LESCO which held 18,700 conversion shares about 22% of S.S.B.'s capital (Ex. 505/121).

(B) Deferred shares

Out of 1,52,319 Deferred Shares of Rs. 2-8-0 each investing public (1,098 persons) held 60,617 shares (Ex. 517).

On 28-2-51, the date of settlement of the compensation :

(A) Conversion Shares

- (i) Bharat Insurance Co. Ltd., held 21,000 Conversion Shares. (Ex. 366).
- (ii) LESCO held 18,700 Conversion shares (Ex. 505/121).
- (iii) D.D.C. Ltd. held 2,700 Conversion Shares (Ex. 441/28).

(B) Deferred Shares

Investing Public (1,098 persons) held 60,617 Deferred Shares. (Ex. 517).

M. D. M.

On 27-10-50, the date of the breach of the selling agency agreement :

(A) Conversion Shares

- (i) Investing public and policyholders were interested in the Bharat Insurance Co. which held 4,000 Conversion shares, i.e. 13% of M.D.M.'s shares capital (Ex. 366).
- (ii) Investing Public was also interested through D.J.A. which held 7,200 conversion shares, i.e., 24% of M.D.M.'s capital (Ex. 26/41). In D.J.A. investing public was interested up to 80%, hence the investing public was interested up to about 20% in M.D.M.
- (iii) LESCO which held 5,200 Conversion shares, i.e., 17% of M.D.M.'s capital (Ex. 505/121).

(B) Deferred Shares

Out of 35,100 Deferred shares of Rs. 5 each Investing public (904 persons) held 21,852 shares (Ex. 520).

On 28-2-51, the date of settlement of the compensation :

(A) Conversion Shares

- (i) Bharat Insurance Co. Ltd. held 4,000 conversion shares (Ex. 366).
- (ii) LESCO held 3,200 Conversion shares (Ex. 505/121).

(B) Deferred Shares

Investing public (904 persons) held 21,852, Deferred shares (Ex. 520).

If the compensation had not been paid to D.C.P.M. by S. S. B. and M.D.M., the large number of Deferred Shareholders (in the case of S.S.B., 1,098 persons holding 60,617 deferred shares and in the case of M.D.M., 904 persons holding 21,852 deferred shares) would have received Rs. 51,507 and Rs. 64,614 respectively by way of dividends at the time of the liquidation of the Companies, and the balance amount of Rs. 28,58,593 in the case of S.S.B. and Rs. 17,15,386 in the case of M.D.M. would have been paid

to the following companies which were shareholders of the Mill Companies as dividend in liquidation:—

S.S.B.		M.D.M.	
		Conv. Shares	Conv. Shares
D.C.P.M. } (100%)		53,792	D.C.P.M. 23,093
R. Dalmia } Beneficial interest			
LESCO Beneficial interest (95%)		18,700	100% LESCO 5,200
BUA Beneficial interest (100%)		20	95%
M.D.M. Beneficial interest (96.3%)		6,824	
D.D.C. Beneficial interest (65%)		2,700	
		82,036	
		91,702	
D.C.P.M.		Defd. Shares	

The above companies would, however, have been liable to tax in respect of the amount received by them as dividend in liquidation from the two mill companies. The amount of such tax is estimated at Rs. 6,99,268 and Rs. 5,31,180 respectively in the case of S.S.B. and M.D.M. Co. Ltd. But this tax liability was evaded or avoided by having recourse to the device of drawing out the accumulated profits in the form of compensation not liable to tax in the hands of the recipient at that time.

The Income-tax aspects of the transactions of the two mill companies namely—S.S.B. and M.D.M. which resulted in the payment of the compensation of Rs. 29,10,000 and Rs. 17,80,000 on the termination of their Selling Agencies, will be discussed later. It will be seen there how to device of such compensation payments enabled the D. J. Group, and later R. Dalmia to evade or avoid proper income-tax liability.

From the above it will be seen that the payment of compensation to D.C.P.M. was made in disregard of honest commercial practice and it cannot be justified as a transaction in the normal course of business.

Further, with a view to prevent any investigation into the affairs of these Companies which were parties to the transaction and to remove evidence that would otherwise have been available in the books of Accounts and records,—first of the Mill companies and then of D.C.P.M. were destroyed..

The directors of S.S.B., M.D.M., and D.C.P.M. at the relevant dates were:—

S.S.B.
J. P. Jain
Manmohanlal
Raizada
K. B. L. Chordia
V. S. Chordia
B. L. Chokhani

M.D.M.
J. P. Jain
G. L. Chokhani
B. L. Raizada
S. S. L. Chordia
B. L. Chokhani

D.C.P.M.
V. D. Agarwal
M. K. Roy
H. D. Bishnoi
S. R. Srivastava
P. S. Patke



CHAPTER V

MANAGING AGENCY AGREEMENTS

As pointed out earlier, at the time of acquisition the two mills companies, S.S.B. Mills Ltd., and M.D.M. Co. Ltd. had large reserves made up of profits accumulated over a number of years amounting to Rs. 90 lacs. To this, a sum of about Rs. 67 lacs was added during the course of the following four years so that in March 1950 the accumulated reserves for the two mills companies came to Rs. 1,57,25,397 (S.S.B. Mills Ltd. Rs. 82,05,193 and M.D.M. Co. Rs. 75,20,204). About this time all the conversion shares of the face value of Rs. 100 each (82,036 shares in the case of S.S.B. Mills Ltd., and 28,328 shares in the case of M.D.M. Co. Ltd.) were held by R. Dalmia and companies under his control; and as regards the Deferred shares, face value of Rs. 2-8-0 each in the case of S.S.B. Mills Ltd. and Rs. 5 in the case of M.D.M. Co. Ltd., R. Dalmia held over 60% in the case of S.S.B. Mills Ltd. and 37% in the case of M.D.M. Co. Ltd.

The shareholders could only have drawn out the accumulated profits subject to payment of Super-tax. Also in the case of liquidation these profits could be subjected to Super-tax in the hands of the shareholders, and in some cases subject also to both Income-tax and Super-tax. A plan was, therefore, devised whereby the aforesaid reserves could be drawn out without payment of any tax. This was done as under.

On 5th July 1950, both S.S.B. Mills Ltd., and M.D.M. Co. Ltd. resolved to appoint Bharat Union Agencies Ltd. and Vastra Vyavasaya Ltd. respectively as their Managing Agents with effect from 1st July, 1950. In both B.U.A. Ltd. and V.V. Ltd., R. Dalmia was the sole beneficiary. The appointment was made for a period of 20 years from 1st July, 1950. The more important terms were as under :—

(i) *Remuneration :*

- (a) Rs. 2,000 per month as an office allowance;
- (b) A commission of 10% on the annual net profits whether a dividend is declared or not; and
- (c) All expenses incurred by the Managing Agents to be paid by the two mill companies.

(ii) *Covenant :*

Proportionate commission to be paid in case of termination of Managing Agents in any year before the close of the financial year.

(iii) *Compensation for loss of business :*

In the event of the company closing down their business or selling their mills or being wound up except as provided in Clause (11) the Managing Agents to receive compensation for the loss of their business for every year of the then unexpired residue of the said period of twenty years, a sum equal to the average annual remuneration earned by the Managing Agents.

during the five years immediately preceding the date of such closing down or sale or the resolution or order winding up the companies are made, *provided however* that if such closing down or sale or winding up occurs at any time before the Managing Agents shall have served the companies for a period of three years from 1st July, 1950 the compensation payable to the Managing Agents for every year of then expired residue shall be Rs. 2,000 per mensem as and by way of office allowance *plus* commission at the rate of 10% on the average annual net profits of the companies *during the five years immediately preceding the date of such closing down or sale or the resolution or order for winding up is made.*

Soon thereafter, on 21st July, 1950, B.U.A. Ltd. on behalf of S.S.B. Mills Ltd., issued a notice to the shareholders of S.S.B. Mills Ltd., informing them that a meeting would be held on 16th August, 1950 to authorise the directors of S.S.B. Mills Ltd., to sell its undertaking under Section 86-H of the Indian Companies Act, 1913.

Similarly V.V. Ltd., on behalf of M.D.M. Co. Ltd., issued a notice to the shareholders of M.D.M. Co. Ltd., on 25th July, 1950, informing them that a meeting would be held on 16th August, 1950 to authorise the directors of M.D.M. Co. Ltd., to sell its undertaking under section 86-H of the Indian Companies Act, 1913.

Both meetings were held on 16th August, 1950 and the directors obtained a general authority to sell the undertakings without placing any specific proposal for sale before the shareholders.

The normal Managing Agreement between S.S.B. Mills Ltd. and B.U.A. Ltd., was entered into on 26th October, 1950. This was signed by V.S. Chordia and K.B.L. Chordia on behalf of S.S.B. Mills Ltd., and B.U.A. Ltd. respectively.

The agreement between M.D.M. Co. Ltd., and V.V. Ltd. was entered into on 30th August, 1950 and was signed by S.S.L. Chordia and G.L. Chokhani on behalf of M.D.M. Co. Ltd. and V.V. Ltd. respectively.

It will be noticed that these agreements were entered into *in spite of the fact that the authority to sell the undertakings had already been obtained on 16th August, 1950.*

On 27th October, 1950 formal agreements to sell the undertakings of the mill companies were entered into and later, in February, 1951 the sale deeds were executed. The sale deeds constituted a breach of the terms of the Managing Agency Agreements, according to B.U.A. Ltd. and V.V. Ltd. and they claimed compensation for the unexpired period of 19 years and 8 months though the companies had acted as Managing Agents for a period of only 4 months. On 28th February, 1951 the amount of compensation was mutually settled between the directors of the mill companies and the Managing Agents at Rs. 73,10,000 payable to B.U.A. Ltd., and Rs. 46,80,000 to V.V. Ltd.

The investing public and the policy holders were interested in S.S.B. Mill and M.D.M. Co. Ltd., as shown below on the date of the appointment of

the Managing Agents, on the date of the breach of the Managing Agency and also on the date of the settlement of compensation.

On 5th July 1950—Date of appointment as Managing Agents

S.S.B. Mills Ltd.				M.D.M. Co. Ltd.			
			C. Shares				C. Shares
Bharat Insurance	..	..	21,000	Bharat Insurance	..	..	4,000
L.E.S. Co.	..	..	18,700	LESCO	..	..	5,800
D.J.A. Ltd.,	..	..	21,800	D. J. Airways	..	..	7,200
D.D.C. Ltd.,	..	..	2,700				
			<u>64,200</u>				<u>16,400</u>

On 27-10-1950—the date on which the Breach of the Managing Agency Agreement was caused

C. Shares				C. Shares			
Bharat Insurance	..	..	21,000	Bharat Insurance	..	..	4,000
L.E.S. Co.	..	..	18,700	LESCO	..	..	5,200
D. J. Airways	..	..	21,800	D. J. Airways	..	..	7,200
D.D.C. Ltd.	..	..	2,700				
			<u>64,200</u>				<u>16,400</u>

On 28-2-1951—the date of the settlement of compensation

Bharat Insurance	21,330	C. Shares	Bharat Ins.	4,000	C. Shares.
LESCO	18,600	"	LESCO	5,200	"
D.D.C. Ltd.	2,700	"			
	<u>42,400</u>			<u>9,200</u>	

On the date on which the compensation was settled, namely, 28-2-1951, S.S.B. Mills Ltd., and M.D.M. Co. Ltd., had at least Rs. 82,05,193 and Rs. 75,20,204 respectively as free reserves and profits. Had B.U.A. Ltd., and V.V. Ltd., not been fraudulently and collusively appointed as Managing Agents of S.S.B. Mills Ltd., and M.D.M. Co. Ltd., and had the compensation not been paid to them, the whole of the free reserves and profits, namely, Rs. 1,57,25,397 as mentioned earlier, would have been available for distribution as accumulated profits to the shareholders on liquidation and would have been liable to tax in their hands as dividends. But by resorting to the device of first entering into, and then causing a breach of the Managing Agency Agreements, and thereafter paying out the amounts as compensation, the free reserves were drawn out without payment of any tax. Compensation at that time was not liable to tax in the hands of recipients.

In our opinion this was fraudulent.

We estimated that the gains made by evasion and/or avoidance of Income-tax liability by reason of the above devices were about Rs. 17,56,635 in the case of the S.S.B. Mills and B.U.A. and about Rs. 13,01,535 in the case of M.D.M. Co. and V.V. Ltd. This is only an estimate. It is impossible to reach an exact figure in the absence of data which could not be obtained, specially as the Income-Tax records of the Companies concerned were not

available to the Commission. We, however, gave a detailed indication of the way in which we reached these figures in our statements of matters. It is not necessary to burden this report with those calculations because it is outside the scope of our inquiry to make an income-tax assessment. It is enough for our purpose to say that such elaborate frauds are not perpetrated unless there is hope of substantial pecuniary gain and, as we are asked in our terms of reference to indicate the extent of these gains it is enough to say that in our opinion they were substantial and that we estimate them as above on the material available to us.

The above estimates, it may however be pointed out, do not take into account the reduction of tax liability in the hands of the payer companies, by reason of the debit of the compensation payments in their accounts, as items of business expenditure. This could not be computed in the absence of information regarding the quantum of business profits arising from the sale of the depreciable mill assets.

In the S.S.B. Mills Ltd., there were 1,098 shareholders holding 60,186 deferred shares and in the M.D.M. Co. Ltd., 904 shareholders holding 21,852 deferred shares who were not connected with the D. J. Group. Although the money value of the shares held by these outsiders was small compared to the total paid-up capital, the interests of the little man can neither be brushed aside nor disregarded. It is as important to protect him as to protect those more fortunately situated in life, because his small investments mean much more to him than the larger investments of richer men.

CHAPTER VI

HAINES ROAD PROPERTY

The transfer of the Haines Road property of S.S.B. Mills Ltd., to D.C.P.M. on or about 2nd October 1951 for Rs. 7,60,000 when its real price was Rs. 16,60,000 provides another instance of the pattern, already noticed, to draw away the assets of a prosperous company at a much reduced value to a concern in which R. Dalmia was wholly or substantially interested. In this case, as will be shown hereafter, the object for which the transfer was effected was—

- (a) to dispose of the valuable properties of S.S.B. Mills Ltd., before it was taken into liquidation;
- (b) to divert the capital profit on sale of the land which if realised by the company and finally distributed on liquidation to its principal shareholders would have been liable to Income-tax in their hands; and
- (c) to ultimately benefit R. Dalmia through D.C.P.M. of which he was the sole beneficiary.

D.C.P.M. which was then under the effective control of R. Dalmia, sold the property situated at Nahur to Bharat Insurance Co. Ltd., on 19-3-1951 for Rs. 40,19,664 (Ex. 847). The cost of this land to D.C.P.M. was Rs. 11,40,077-6-0. Under the terms of the sale, D.C.P.M. was to develop the land into a residential colony and if it failed to do so, the Bharat Insurance Co. Ltd., was entitled to claim the cost of development from D.C.P.M.; and that the Bharat Insurance Co. Ltd., would develop the land as a residential colony itself.

After some time Bharat Insurance Co. Ltd., discovered that the Nahur Land was not developed and also that it was not permissible to use a part of it, namely, 30,000 sq. yds. for non-agricultural purposes. Bharat Insurance Co. Ltd., thereupon got the Nahur land valued and its value was assessed at Rs. 24,52,000. Bharat Insurance Co. Ltd., had paid Rs. 40,19,664 and therefore made a claim on D.C.P.M. for the difference.

In settlement of this claim, D.C.P.M. transferred the land at Haines Road belonging to S.S.B. Mills Ltd., to Bharat Insurance Co. Ltd., for a consideration of Rs. 16,60,000.

The value of the Haines Road property was assessed at Rs. 16,60,000 by a firm of valuers of Bombay, Messrs. K. R. Irani & Co. In spite of this fact, S.S.B. Mills was persuaded to transfer this very land to D.C.P.M. for Rs. 7,60,000.

This was possible because the then directors of S.S.B. Mills Ltd., namely, K. B. L. Chordia, Raizada Manmohanlal, V. S. Chordia and B. L. Chokhani being closely related and subservient to R. Dalmia, were not in a position to act independently. R. Dalmia was at that time substantially interested

in D.C.P.M. and by the end of 1952 he became its sole beneficiary (Ex. 200 and 201).

The amount of Rs. 7,60,000 was not paid in cash by D.C.P.M. Instead this sum was debited to its account in the books of S.S.B. Mills Ltd., (Ex. 499/344).

In October 1951, the investing public was interested in S.S.B. Mills Ltd., because its shares were held by the following public limited companies in which the investing public had interest.

	C. Shares	
(a) LESCO	18,700	(Ex. 505/121)
(b) D.D.C. Ltd.	2,700	(Ex. 441/28)
(c) 60,186 Deferred Shares of Rs. 2-8-0 each were held by the investing public		(Ex. 487)

This transaction was in Disregard of Honest Commercial Practice because the Haines Road property was transferred to D.C.P.M. for Rs. 7,60,000 when the then market value was Rs. 16,60,000; also because D.C.P.M. had transferred the same land at Rs. 16,60,000 to Bharat Insurance Co. Ltd.

This was possible because the Bharat Insurance Co. Ltd., S.S.B. Mills Ltd., and D.C.P.M. were under the common control of R. Dalmia.

The directors of S.S.B. Mills Ltd., at that time were K. B. L. Chordia, V. S. Chordia, Raizada Manmohanlal and B. L. Chokhani. These persons acted under the instructions of R. Dalmia and were not in a position to act independently. The person really responsible was R. Dalmia. In this case the loss to S.S.B. Mills Ltd., a public limited company, was Rs. 9,00,000 with a corresponding gain to D.C.P.M. which was under the control of R. Dalmia who was its sole beneficiary.

The aforesaid profit of Rs. 9,00,000 realised by D.C.P.M. on the sale of the Haines Road property on 2nd October, 1951 was Capital in nature in its hands and was not, accordingly, assessable to income-tax. This profit, if realised by S.S.B. Mills Ltd., on its sale direct to Bharat Insurance Co. Ltd., would also have been Capital in nature and so not assessable to Income-tax in its hands. But such profits, if earned by S.S.B. Mills would have correspondingly increased its distributable reserves and profits to the shareholders on liquidation, though if distributed, would have reached the hands of the shareholders as *non-taxable* 'dividend' being capital profits earned outside the period of two years ending 31-3-48.

However, the distribution of the said sum of Rs. 9,00,000 though non-taxable dividend on liquidation as explained above would have been assessable to Income-tax as 'Business Profits' in the hands of all the principal shareholders of S.S.B. Mills Ltd., who were regarded as dealers in stores except M.D.M. Co. Ltd., and would have correspondingly increased their *taxable* 'Business Profits' or reduced their 'admissible' business loss. In that case the *non-taxable* dividends would have been received by these share-

holders with consequent enhancement of their Income-tax liability as indicated below :—

Shareholders				Holdings		Non-taxable dividend	Tax payable on non-taxable dividend as "Business Profits"
						Rs.	Rs.
L.E.S.Co.	..	..	..	18,700	C. Shares	1,96,053	78,263
D.C.P.M.	..	..	..	53,792	C. Shares	5,62,963	
				21,702	D. Shares	24,035	
						5,87,993	2,55,412
D.D.C. Ltd.	..	..	..	2,700	C. Shares	28,307	11,301
B.U.A. Ltd.	..	..	..	20	C. Shares	210	91
							3,45,072

It will thus be seen that the total evasion of Income-tax liability was to the extent of about Rs. 3,45,072. This constituted a gain to R. Dalmia.



CHAPTER VII

LOANS TO D.C.P.M.

After acquisition, S.S.B. Mills Ltd., and M.D.M. Co. Ltd., were made to grant loans to D.C.P.M. These loans were given without any security.

This is another instance of the pattern followed by the D. J. Group and later by R. Dalmia of making a company in which the public were directly or indirectly interested to advance moneys without any security to companies in which the D. J. Group and later R. Dalmia were mainly interested for the benefit of those companies and those interested therein and to the detriment of the lending companies in which the public were interested.

The manner in which the loans to D.C.P.M. were sought to be repaid is also another instance of the pattern, whereby the repayment was not intended to take place in the form in which it was given, namely, cash, but by making book adjustments. By these means the funds of the two companies were diverted to assist R. Dalmia who had borrowed large sums of money through D.C.P.M. Further, the funds of these two Companies were utilised—

(a) to acquire and/or to retain the control of the companies, such as, Bennett Coleman & Co. Ltd., D. J. Aviation Ltd. Edward Keventer(s) Ltd. etc.; and/or

(b) to start new concerns, such as, Jaipur Udyog Ltd.

D.C.P.M. received advances from S.S.B. Mills Ltd., and M.D.M. Co. Ltd., and the amounts outstanding as on the close of the financial years of D.C.P.M. were as under :—

D.C.P.M. Year ending	S.S.B. Mills Ltd.	M.D.M. Co. Ltd.
	Rs.	Rs.
29-2-1948	91,00,869 6 3	52,02,148 7 6 (Ex. 496,
28-2-1949	1,76,53,608 12 10	74,61,053 2 6 (Ex. 496)
28-2-1950	1,40,81,590 14 6	63,21,059 0 0 (Ex. 495)
28-2-1951	2,11,58,495 8 9	1,13,55,936 10 3 (Ex. 238-B)
29-2-1952	1,84,02,512 3 0	84,81,838 11 6 (Ex. 498)

The amounts due from D.C.P.M. at the close of the financial years of M.D.M. Co. Ltd., and S.S.B. Mills Ltd., were as follows :—

Year ending	M.D.M. Co. Ltd.	S.S.B. Mills Ltd.
31-3-1958 ..	49,22,625 0 0 (Ex. 506)	1,25,24,687 0 0 (Ex. 487)
31-3-1949 ..	68,19,998 0 0 (Ex. 513)	1,64,02,410 0 0 (Ex. 511)
31-3-1950 ..	68,28,700 0 0 (Ex. 514)	1,52,33,859 0 0 (Ex. 512)
31-12-1951* ..	1,25,48,093 10 6 (Ex. 843)	2,41,27,216 1 6 (Ex. 843)

*(Date of liquidation of M. D. M. Co. Ltd. and S. S. B. Mills Ltd.)

The following shares of D.C.P.M. were registered in the name of R. Dalmia :—

Year	Pref. shares	% to paid-up capital	Ordinary shares	% to paid-up capital	Defd. shares	% to paid-up capital	
20-11-51 ..	5,500	22%	74,300	37%	3,59,000	72%	Ex. 494
28-2-52 ..	5,500	22%	1,70,300	85%	3,59,000	72%	Ex. 200
14-4-53 ..	19,022	76%	1,97,200	98%	3,59,000	72%	Ex. 201

S. N. Dudani, Secretary, D.C.P.M. in his affidavit datd 30th September, 1952, had stated that all the shares of D.C.P.M. were owned by R. Dalmia. Some were registered in his own name and some in the names of his nominees and the rest were held by private companies whose shares in turn were similarly owned by him. None of the shares were owned by any outsiders (Ex. 198). R. Dalmia, in his statement dated 10th October, 1952, before the District Judge, Delhi, admitted on oath that D.C.P.M. nearly all belonged to him (Ex. 845). The effective control of both the mill companies and D.C.P.M. were thus with the D. J. Group originally and later with R. Dalmia.

Unsecured loans of large amounts were granted by S.S.B. Mills Ltd., and M.D.M. Co. Ltd., to D.C.P.M. from time to time on interest at 4½% per annum (Ex. 492). Although S.S.B. Mills and M.D.M. Co. Ltd., had investments and cash and bank balances to the extent of Rs. 1,11,04,349 (Rs. 67,42,792 in case of S.S.B. Mills Ltd., and Rs. 43,61,557 in the case of M.D.M. Co. Ltd.) as at 31st March, 1946 (Exs. 487 and 506), still they were made to borrow large amounts ranging between Rs. 99 lacs to Rs. 185 lacs in the case of S.S.B. Mills Ltd. (Ex. 487) and Rs. 41 lacs to Rs. 76 lacs in the case of M.D.M. Co. Ltd. (Ex. 506) by pledging their assets to finance D.C.P.M. to the extent of Rs. 241 lacs in the case of S.S.B. Mills and Rs. 125 lacs in the case of M.D.M. Co. Ltd. (Ex. 843). At this stage there was no indication of any expansion in the activities of the mill companies so as to necessitate or justify borrowing funds by pledging their goods.

It may also be mentioned in this connection that the advances to D.C.P.M. in the case of M.D.M. Co. Ltd., were shown in the balance sheet of M.D.M. Co. Ltd., under the main head 'Book Debts'. This was a deceptive presentation of the position to the shareholders of M.D.M. Co. Ltd.

The investing public and the policyholders were interested in the mill companies as under :—

S.S.B. Mills Ltd.

- (a) Through Bharat Insurance Co. Ltd. which held 21,460 Conversion shares from December 1946 to August 1951 Ex. 366
- (b) Through LESCO which held 18,700 Conversion shares from March 1947 till the liquidation in December 1951 Ex. 505
- (c) Through D. J. Airways Ltd., which held 21,800 Conversion shares from 23-3-1950 to 28-2-1951 Ex. 26/41
- (d) Through D.D.C. Ltd., which held 2,700 Conversion shares from 31-7-49 to 31-12-1952 Ex. 441

M.D.M. Co. Ltd.

- (a) Through Bharat Insurance Co. Ltd., which held 4,000 Conversion shares from December 1946 to 29-9-1951 Ex. 366
- (b) Through LESCO, which held 5,200 Conversion shares from March 1947 till the liquidation in December, 1951 Ex. 505
- (c) Through D. J. Airways Ltd., which held 7,200 Conversion shares from 23-3-1950 to 28-2-1951 Ex. 26/41

S.S.B. Mills Ltd., and M.D.M. Co. Ltd., and also D.C.P.M. were under the control of the D. J. Group and later of R. Dalmia and S.S.B. Mills Ltd., and M.D.M. Co. Ltd., were made to borrow large amounts by pledging their assets, and, thereafter, to advance large amounts to D.C.P.M. without security at a rate of interest, $4\frac{1}{2}\%$, which cannot be considered adequate taking into account the risk involved (Ex. 491).

In October 1950, the mill companies sold their land, plant, building machinery etc., to Ram Sahai Mull More Ltd. (Exs. 842 and 838) Both the mill companies were thereafter taken into liquidation on 31st December, 1951. The advances to D.C.P.M. were not, as indicated earlier, repaid in cash, but were partly adjusted against the compensation payable by M.D.M. Co. Ltd., and S.S.B. Mills Ltd., to D.C.P.M. amounting to Rs. 46,90,000 towards the termination of Selling Agency and Rs. 1,19,90,000 towards the termination of Managing Agency, and partly against the 'Return of Capital' when the mill companies were taken into liquidation (Exs. 487 and 506).

It will be seen from the above, that the loans to D.C.P.M. were made to enable the Group and later R. Dalmia to retain control over other companies and particularly to benefit R. Dalmia who obtained large advances from D.C.P.M. in his own name, even though he was not a Director or an officer of D.C.P.M.



CHAPTER VIII

BENNETT COLEMAN SHARES

At the time the D. J. Group acquired the mills companies, S.S.B. Mills Ltd. and M.D.M. Co. Ltd. had large reserves made up of accumulated profits amounting to about Rs. 90 lacs. These were augmented to Rs. 157 lacs by 1951. In order to extinguish the Revenue Reserves and Profits, as stated earlier, the D. J. Group made these mills companies invest their funds in the shares of Bennett Coleman & Co. Ltd., a private limited company of the Group in or about December, 1946. Later, in 1951, these companies were made to part with these shares at a substantially low price to another sister company, D. J. Aviation Ltd., of which R. Dalmia was the principal beneficiary. This low rate was a manipulated one. By this device, the reserves of the mills companies were reduced to the extent of the losses sustained on the sales.

This was done with a view to evade tax liability on the amount of Reserves and profits which, but for these losses, would have been distributed on liquidation and would have been received by the principal shareholders as dividends liable to be taxed as 'Business Profits' in their hands.

Another object of making this investment was to retain control of the newly acquired private limited company, Bennett Coleman & Co. Ltd. The manner in which these investments were later transferred to D. J. Aviation Limited, another company in which R. Dalmia was the principal beneficiary at a value less than 50% of the original purchase price provides another instance of the pattern of the misuse of funds of public limited companies, in this case S.S.B. Mills Ltd. and M.D.M. Co. Ltd., for the ultimate benefit of R. Dalmia.

With this background, we will proceed to examine the transactions relating to the purchase and sale by the S.S.B. Mills and M.D.M. Co. of the shares of Bennett Coleman & Co.

In or about December 1946, S.S.B. Mills bought 9,500 Pref. shares of Bennett Coleman & Co. at Rs. 557 per share for Rs. 52,92,500 (Ex. 487).

About the same time M.D.M. Co. bought 6,850 Preference shares of Bennett Coleman & Co. at Rs. 550 per share for Rs. 37,67,500 (Ex. 506).

The names of the sellers are not known as the books of the mills companies were not available. These blocks of shares remained with the two mills companies till at least 31-5-1950 and probably even longer. We say this because we found from the books of D. J. Aviation that D. J. Aviation bought 16,350 Preference shares (9,500 shares from S.S.B. Mills and 6,850 shares from M.D.M. Co. Ltd.) at Rs. 200 a share through Jaipur Traders Ltd. In the absence of the books of the two mills companies and of Jaipur Traders Ltd. we presumed in our statements of Matters that the 16,350 shares that we have referred to were the same blocks that the two mills companies had bought in December 1946. As this inference was not denied in any of the written statements we take it that that is correct.

By reason of these sales the S.S.B. Mills lost Rs. 33,92,500 on its Preference shares at Rs. 357 a share, and the M.D.M. Co. lost Rs. 23,97,500 at Rs. 350 per share.

It was argued by counsel for Shanti Prasad Jain in connection with another transaction that it is not right to look at the matter in this way because the marketing was falling and this kind of arithmetic proceeds upon the mistaken assumption that the market was steady in all this period.

We have no evidence to show that the market for these shares had fallen in the interval. Bennett Coleman was a private limited company and its shares were not quoted on the stock exchange. *The two mills Companies and Jaipur Traders Ltd., were all R. Dalmia concerns.* All three were taken into liquidation and their books were destroyed. Also, this is a matter that was within the special knowledge of R. Dalmia, and as he neither challenged our assertions in the statements of matters in this respect, nor led evidence to show that our assumption was wrong we are justified in presuming that there was no fall in the market in respect of these particular shares and that therefore the loss that we have set out is correct.

The balance sheets of the two mills companies as at 31-3-1946 show that neither had enough surplus funds to enable them to make these two investments of Rs. 52,92,500 and Rs. 37,67,500 respectively. On the contrary, the result of these investments was that they were obliged to borrow large sums of money to enable them to carry on their own business (Exs. 487 & 506).

The yield on the investment of Rs. 52,92,500 by S.S.B. by way of dividend was only Rs. 5,46,250 during the period 31-3-1947 to 16-11-1951. And in the case of the investment of Rs. 37,67,500 by M.D.M. Co. the yield was only Rs. 3,93,875 during the same period. In the periods 1949-50 and 1950-51 Bennett Coleman and Co. did not declare any dividends.

Neither S.S.B. nor M.D.M. were companies whose business it was to deal in shares. The object clause No. 16, of the Memorandum of Association of the S.S.B. Mills provided that it could invest and deal with the moneys of the company *not immediately required* in such manner as may from time to time be determined. That of the M.D.M. Co. was similar. The clause is No. 3(H) and says that the company could invest its funds upon such securities as may from time to time be determined by the directors. It was, therefore, improper for these two mills companies to have made these investments in a private limited company, especially when that left them with no funds to carry on their own business without borrowing. If these mills companies had invested these moneys in any bank or other investments they could have earned, at the rate of $4\frac{1}{2}\%$ Rs. 11,02,725 in the case the S.S.B. Mills and Rs. 7,84,925 in the case of the M.D.M. Co.

The loss that the two mills sustained by this shuffling of shares was of a capital nature. We have also shown that they sustained heavy losses due to the payments of compensation for terminating the Selling and Managing Agencies. Despite this the Liquidators of the two mills distributed to the shareholders, on 31-12-1952, sums of Rs. 53,65,248 and Rs. 35,72,356 respectively out of the surplus assets of the respective companies over and above the return of the paid up capital (Exs. 487 & 506).

But for these losses of Rs. 33,92,500 and Rs. 23,97,500 the Companies at the date of the liquidation on 31st December 1951, would have been left with correspondingly higher reserves and profits which would have been distributable to shareholders as surplus assets. The scheme of Section 2(6A)(C) of the Indian Income-tax Act, 1922 (prior to its amendment in 1955) was to tax the "accumulated profits" of the six years immediately preceding the year of liquidation, and therefore the aforesaid losses, having been debited in the year of liquidation, could not have reduced the accumulated profits of the six preceding years. Nor would the accumulated profits have been reduced because the losses were of capital nature. But if the losses had not been debited, the reserves when distributed would have become assessable in the hands of such of the shareholders of S.S.B. and M.D.M. as were regarded as dealers in securities, and these would have increased their "business profits" even if they did not fail to be assessed under the said section 2(6A)(C) of the Indian Income-tax Act, 1922. Thus, if the said sums of Rs. 33,92,500 and Rs. 23,97,500 been available for distribution, they would have correspondingly increased the taxable "business profits" or reduced the admissible "business losses" in the hands of the shareholders other than M.D.M. Co. Ltd. In that case, the non-taxable dividends would have been received by these shareholders with consequent reduction of their income-tax liability as indicated below :—

S.S.B. Mill (Exs. 487 and 491)

Shareholders	Holdings	Non-taxable dividend	Tax payable on non-taxable dividend as 'Business profits'
		Rs.	Rs.
L.E.S.Co. 	18,700 C. Shares	7,38,794	2,94,940
D.C.P.M. 	53,792 C. Shares	21,25,199	9,62,476
	91,702 D. Shares	90,574	
		<u>22,15,773</u>	
D.D.C. 	2,700 C. Shares	1,06,671	43,085
B.U.A. 	20 C. Shares	790	333
			<u>13,00,834</u>

NOTE.—The sum of Rs. 33,92,500 out of the Reserves and profits would have been distributed to the shareholders as non-taxable dividend on liquidation on the two classes of shares of the company (in proportion to their total paid-up value) as below :—

	Rs.	Rs.
(i) On 82,036 Conversion shares (of Rs. 100 each) ..	33,92,500	$\times \frac{82,03,600}{85,84,394}$
		3,80,798
(ii) On 1,52,319 Defd. shares (of Rs. 2/8/- each) ..	33,92,500	$\times \frac{85,84,394}{85,84,394}$

M.D.M. Co, Ltd.

Shareholders		Holdings	Non-taxable dividend	Tax payable on non-taxable dividend as 'Business Profits'
			Rs.	Rs.
L.E.S.CO.	.. .. .	5,200 C. Shares	4,14,420	1,65,444
D.C.P.M. ...	.. .. .	23,128 C. Shares	18,43,213	8,23,577
		13,248 D. Shares	52,791	
			18,96,004	9,89,021

NOTE.—The sum of Rs. 23,97,500 out of the reserves and profits would have been distributed to the shareholders as non-taxable dividend on liquidation of the two classes of shares of the company (in proportion to their total paid-up value as below :—

	Rs.	Rs.
		28,32,800
(i) On 28,328 Conversion shares (Rs. 100 each) ..	23,97,500 ×	30,08,300
		1,75,500
(ii) On 35,100 Defd. shares (Rs. 5 each)	23,97,500 ×	30,08,300

It is thus apparent that the total evasion of income-tax liability was about Rs. 13,00,834 in the case of the S.S.B. Mills and about Rs. 9,89,021 in the case of M.D.M. Co. Ltd. The major portion of this would have gone to R. Dalmia.

CHAPTER IX

LIQUIDATION, TRANSFER OF ASSETS AND DESTRUCTION OF BOOKS

We now reach the final stage. The usual pattern was followed: First, a member's voluntary winding up as soon as the mills had been bled white; next, a transfer of the assets to a company under the effective control of R. Dalmia—in this case South Asia Industries (the old LESCO) and lastly destruction of the books.

The objects were—

- (1) to terminate the corporate existence of the mills as the purpose for which they had been acquired had been achieved; and
- (2) to obviate possible investigations into the affairs of the mills as managed by R. Dalmia.

The objects for which the books were destroyed were—

- (1) to obviate a possible inquiry into the affairs of the mills as managed by R. Dalmia;
- (2) to obviate a possible judicial investigation; and
- (3) to destroy evidence that would be available in Civil and Criminal proceedings.

We will now examine the facts.

After R. Dalmia acquired control of the two mill companies, S.S.B. Mills Ltd. and M.D.M.Co. Ltd., he devised the following scheme to enable him to draw out the large profits and accumulated reserves of these two mill companies.

If he had not done so, these profits and reserves would have gone to the shareholders, but they would have been obliged to pay tax on the sums that reached their hands.

In the case of mill companies, the shareholders were D.C.P.M., LESCo., B.U.A. Ltd., and D.D.C. Ltd. R. Dalmia had 100% shareholdings in D.C.P.M., 95% in LESCo., 100% in B.U.A. Ltd. and 65% in D.D.C. Ltd., Therefore to all intents and purposes the shareholders of these two mill companies were R. Dalmia.

In order to avoid payment of tax, R. Dalmia devised the following scheme. He floated two companies, B.U.A Ltd. and V. V. Ltd., and appointed them, one to each mill, managing agents. He was the sole beneficiary in both these managing agency companies. So they were in reality an alias for R. Dalmia.

Then he brought about a breach of the terms of the managing agency agreements and thus laid the two mill companies open to claims for payment of compensation.

This compensation was not liable to tax at that time. By this device he obtained for himself the profits and accumulated reserves of the two

mill companies through B.U.A. Ltd. and V. V. Ltd., without having to pay tax.

Similarly, D.C.P.M. was, through the directors of the two mill companies, appointed as selling agents. By reason of the same breach, he laid the two mill companies open to payment of compensation and thus drew out the profits and reserves of the two mills by following a similar pattern in this case also.

As stated earlier, the S.S.B. Mills and the M.D.M. Co. were acquired in October 1946 (Ex. 365). Thereafter, in October, 1948, D.C.P.M. was appointed as selling agents for a period of 10 years (Exs. 491/220 & 491/223); and, then on 5th July, 1950, B.U.A. and V. V. Ltd. were fraudulently and collusively appointed as Managing Agents with effect from the 1st July, for a period of 20 years (Ex. 538/1 and Ex. 481).

In October 1950 an agreement to sell the undertaking of these two companies was entered into with Ram Sahai Mull More Ltd. (Exs. 842 & 828). This agreement purported to cause a breach of the Managing Agency and Selling Agency agreements. D.C.P.M., B.U.A. & V.V. Ltd., accordingly claimed compensation.

On 28-2-51 the compensation was mutually settled at Rs. 1,66,80,000. R. D. Joshi & Co. Auditors of S.S.B. and M.D.M. gave Solvency Certificates under Section 207 (2) of the Indian Companies Act, 1913 on 5-12-51 and 12-11-51 respectively (Ex. 487/210 & Ex. 506/638); and declarations in respect of the solvency certificates under Section 207 (1) signed by K. B. L. Chordia, V. S. Chordia and B. L. Chokhani in the case of S.S.B. Mills, and by G. L. Chokhani, S. S. L. Chordia and B. L. Chokhani in the case of M.D.M. were filed with the Registrar of Companies, Bombay (Ex. 487/211 and Ex. 506/639).

On 7th December, 1951 a notice was issued to the shareholders informing them that an Extra ordinary General Meeting was being called for the 31st December, 1951 to consider the special resolution proposing that the S.S.B. Mills and M.D.M. Co. shall be taken into voluntary liquidation (Ex. 487 and Ex. 506).

On 31st December, 1951, at the shareholders general meetings of the respective companies, S.S.B. and M.D.M. were both taken into voluntary liquidation and V. Shanker Iyer was appointed as Voluntary Liquidator (Ex. 487 and Ex. 506). The Liquidator was vested with powers under section 179 (d), (e) and (f) and section 234 (i) of the Indian Companies Act, 1913 (Exs. 487 & 506) on 3-5-52 in the case of S.S.B. and on 26-4-52 in the case of M.D.M. R. D. Joshi and D. D. Joshi were appointed as joint liquidators of both S.S.B. and M.D.M. on 3rd May 1952 and 26th April, 1952 respectively; and on 16th May, 1953, the Voluntary Liquidators of S.S.B. and M.D.M. referred the matter of payment of compensation for the breaches of the Selling and Managing Agencies agreements to Arbitrators.

The Arbitrators gave their award on 24-11-52 and upheld the claim for payment of compensation to B.U.A. and V.V. Ltd. in respect of the Managing Agency Agreements and to D.C.P.M. in respect of the Selling Agency. On the date of the liquidation, viz., 31-12-51 D.C.P.M. was indebted to the S.S.B. Mills to the extent of Rs. 1,84,35,610-12-6 and to M.D.M. Co. to Rs. 1,25,48,093-10-6 (Ex. 843).

On 29th January, 1953 the liquidators of S.S.B. and M.D.M. filed a statement of receipts and payments for the period from 1st January, 1952 to 31st December, 1952 with the Registrar of Companies, Bombay, showing the value of the assets and liabilities as at the commencement of the winding up and the Realisation and Disbursements as follows:—

	S.S.B.	M.D.M.
Assets at the commencement of winding up	2,05,09,262	1,00,22,900
Liabilities at the commencement of winding up	46,91,000	27,60,300
Total realisations	1,85,52,695-6-10	1,04,33,720-0-2
Total disbursements	1,85,24,711-8-10 (Exs. 487 and 506)	1,04,21,860-15-9

In the Liquidator's statement of account the "Realisation" included the amounts of three hundies drawn by the liquidators on D.C.P.M. against its indebtedness to the S.S.B. Mills and M.D.M. Co., to the extent of Rs. 1,84,35,610-12-6 and Rs. 1,25,48,093-10-6 as follows:

(Ex. 487)		(Ex. 506)	
	S.S.B.		M.D.M.
	Rs.		Rs.
(i) 85,84,397-8-0	Being the amount of Hundies drawn on D.C.P.M. in favour of shareholders.	22,80,000-0-0	Being the amount of Hundi drawn on D. C. P.M. in favour of V. V. Ltd.
(ii) 43,10,000-0-0	Being amount of Hundi drawn in favour of B.U.A.	30,08,300-0-0	Being the amount of Hundi drawn in favour of shareholders.
(iii) 53,65,248-7-0	Being amount of Hundies drawn on D.C.P.M. in favour of shareholders.	35,72,356-4-0	Do.
	1,82,59,645-15-0		88,60,656-4-0

The registered shareholders of S.S.B. and M.D.M. at that time, to whom the capital was returned were as follows:

List of shareholders of S.S.B. Mills to whom payment was made up to 31-12-52 (Ex. 487)

Name of shareholder	No. of shares	@ Rs. 100 per share	@ Rs. 62-8-0 per share
<i>Conversion shares :</i>			
1. D.C.P.M.	39,010	39,01,000	24,38,125
2. D.D.C. Ltd.	2,700	2,70,000	1,68,750
3. M.D.M.	6,824	6,82,400	4,26,500
4. B.U.A.	20	2,000	1,250
5. J. C. Jain	12	1,200	750
6. C. L. Chokhani	10	1,000	625
7. Bharat Insurance Co.	21,460	21,46,000	13,41,250
8. R. Dalmia	12,000	12,00,000	7,50,000
	82,036	82,03,600	51,27,250

Name of shareholder	No. of shares	@ Rs. 2-8-0 per share	@ Rs. 1-9-0 per share
<i>Deferred shares;</i>			
1. D.C.P.M.	91,702	2,29,225	1,43,284-6-0
2. Investing Public (1,098 persons) ..	60,617	1,51,573	94,225-0-0
	152,319	3,80,798	2,37,509-6-0

But the beneficial ownership was with the following :
(Ex. 491/71-72)

<i>Conversion shares :</i>			
1. D.C.P.M.	53,792	53,79,200	33,62,000
2. B.U.A.	20	2,000	1,250
3. M.D.M.	6,824	6,82,400	4,26,500
4. D.D.C. Ltd.	2,700	2,70,000	1,68,750
5. L.E.S.C.o.	18,700	18,70,000	11,68,750
	82,036	82,03,600	51,27,250
<i>Deferred Shares :</i>			
1. D.C.P.M.	91,702	2,29,225	1,43,284-6-0
2. Investing Public (1,098 persons) ..	60,617	1,51,573	94,225-0-0
	1,52,319	3,80,798	2,37,509-6-0

*List of shareholders of M.D.M. to whom payment was made
up to 31-12-52 (Ex. 506)*

Name of shareholders	No. of shares	@ Rs. 100 per share	@ Rs. 118-12-0 per share
<i>Conversion shares :</i>			
1. Bharat Insurance Co.	4,600	4,60,000	5,46,250
2. R. Dalmia	6,000	6,00,000	7,12,500
3. J. C. Jain	25	2,500	2,968-12-0
4. D.C.P.M.	17,693	17,69,300	21,01,043-12-0
5. G. L. Chokhani	10	1,000	1,187-8-0
	28,328	28,32,800	33,63,950-0-0

Name of shareholder	No. of shares	@ Rs. 5 per share	@ Rs. 5-15-0 per share
<i>Deferred shares</i>			
1. D.C.P.M.	12,994	64,720	76,855
2. B.U.A.	233	1,165	1,383 7 0
3. P. L. Sah	5	25	29 11 0
4. M. M. Panchwagh	1	5	5 15 0
5. C. J. Kansara	5	25	29 11 0
6. B. L. Chokhani	50	250	296 14 0
7. K. B. L. Chordia	10	50	59 6 0
8. Investing Public	21,852	1,09,260	1,29,746 4 0
	35,100	1,75,500	2,08,406 4 0

But the beneficial ownership was with the following :

(Ex. 491/73)

Conversion shares :

1. L.E.S.C.O.	5,200	5,20,000	6,17,500	0	0
2. J. C. Jain	25	2,500	2,968	12	0
3. G. L. Chokhani	10	1,000	1,187	8	0
4. D.C.P.M.	23,093	23,09,300	27,42,293	12	0
	28,328	28,32,800	33,68,950	0	0

Deferred shares :

D.C.P.M.	12,944	64,720	76,855	0	0
B.U.A.	233	1,165	1,383	7	0
P. L. Sah	5	25	29	11	0
M. M. Panchwagh	1	5	5	15	0
C. J. Kansara	5	25	29	11	0
B. L. Chokhani	50	250	296	14	0
K. B. L. Chordia	10	50	59	6	0
Investing Public	21,852	1,09,260	1,29,764	4	0
	35,100	1,75,500	2,08,406	4	0

S.S.B.

Instead of paying the amount to the registered shareholders of S.S.B. Mills Ltd., the entire amount of Rs. 1,39,49,645-15-0 was credited on 29th and 30th December, 1952 in the first instance to the account of D.C.P.M. The amount of Rs. 43,10,000 payable to B.U.A. was also credited on 29th December, 1952 to the account of D.C.P.M. and the indebtedness of D.C.P.M. which stood at Rs. 1,84,35,615-15-0 at the commencement of the liquidation, i.e. on 1st January, 1952, was brought down to Rs. 1,75,964-13-6 on 31st December, 1952.

M.D.M.

In the case of M.D.M. instead of paying the amount to the registered shareholders, the entire amount of Rs. 65,80,656-4-0 was credited in the first instance to the account of D.C.P.M. The amount of Rs. 22,80,000 payable to V.V. Ltd., was also credited to the account of D.C.P.M. and thus the Indebtedness of D.C.P.M., which stood at Rs. 80,59,325 at the commencement of the liquidation and subsequently increased by Rs. 11,08,900 which represented the return of capital and surplus from S.S.B. Mills Ltd., was ultimately brought down to Rs. 3,07,568-12-0 (Ex. 487 and Ex. 506). On the date of the liquidation 1,098 persons held 60,617 Deferred shares of S.S.B. Mills and 904 persons held 21,852 Deferred shares of M.D.M. The return of capital to the above shareholders was not made direct by the liquidators but the amount was in the first instance credited to the account of D.C.P.M. on 29th and 30th December, 1952 and D.C.P.M. refunded the amount to the respective shareholders (Ex. 487 and Ex. 506).

S.S.B.

Had the S.S.B. Mills not paid the compensation of Rs. 1,02,20,000 all the shareholders, including 1,098 members of the investing public, would

have received a higher return of capital. Of the amount of Rs. 1,02,20,000 nearly Rs. 1,80,894 would have been received by these 1,098 shareholders as surplus on their capital, and the balance of Rs. 1,00,39,101, by five companies as dividend in liquidation.

M.D.M.

Had M.D.M. Co. Ltd., not paid the compensation of Rs. 64,60,000 all the shareholders including 904 members of the investing public would also have received a higher return of capital. Of the amount of Rs. 64,60,000 nearly Rs. 2,34,498 would have been received by these 904 shareholders as surplus on their capital and the balance of Rs. 62,25,502, by the two companies and R. Dalmia.

The above companies would have been liable to tax. The amount of the tax, they would have been liable to pay is estimated at Rs. 42,88,618.

On 10th April, 1953, a notice was given to the shareholders of S.S.B Mills and M.D.M. Co. Ltd., stating that a meeting of the shareholders would be held on 4th May, 1953 to consider the scheme of arrangement under section 208C of the Indian Companies Act, 1931 between S.S.B. Mills and M.D.M. Co. Ltd., on the one hand and South Asia Industries Ltd., (formerly known as LESCO) on the other, and to authorise the liquidators to implement the scheme, if approved.

On 4th May, 1953 at the shareholders' meeting the scheme was approved. Under the scheme South Asia Industries Ltd., was benefited to the extent of Rs. 4,26,069 by taking over assets and liabilities of S.S.B. and suffered a capital loss of Rs. 7,72,748 by taking over the assets and liabilities of M.D.M. The capital loss of Rs. 1,72,748 was set off against the capital profit of Rs. 4,26,069 made in the case of the S.S.B. Mills Ltd. (Exs. 701 & 504).

On 8th May, 1953 the agreement was executed between the liquidators of S.S.B. and M.D.M. and G. L. Chokhani, Director, on behalf of South Asia Industries Ltd.

On 1st February, 1954 the Liquidators filed the final statement of accounts in respect of S.S.B. and M.D.M. with the Registrar of Companies under section 208E of the Indian Companies Act, 1913 (Exs. 487 & 506) and on expiry of three months that is, from 1st May, 1954, both the mill companies were finally dissolved.

Destruction of books:

On 25th May, 1953, i.e. 17 days after taking over the assets and liabilities of S.S.B. and M.D.M. R. Sharma, M. L. Sodhani and R. L. Chordia, directors of South Asia Industries Ltd., authorised G. L. Chokhani a director of the company to destroy the records of S.S.B. and M.D.M. except those that were required for settling the claim of the shareholders of the transferor company under the terms of the scheme (Ex. 505/243). Thereafter the records and books of account of both S.S.B. and M.D.M. were destroyed.

The books of account and records of S.S.B. and M.D.M. have not been made available to the Commission and in response to the summons issued by the Commission in November 1958, South Asia Industries Ltd.

vide its letter No. Com./SAI/748, dated 24-11-58 replied to the Commission as under (Ex. 507):

“After the transfer of assets and liabilities of S.S.B. and M.D.M. in 1953, the company kept only those records of which it had utility and the records which were of no use to the company were disposed of. Whatever record which was available with the company was seized by the Special Police Establishment in 1953. Hence we have not got any record with us pertaining to S.S.B. and M.D.M.”

But no records pertaining to S.S.B. and M.D.M. were seized by the Special Police Establishment.

It may not be out of the place to mention here that M. L. Sodhani, who was a director of South Asia Industries which authorised the destruction of books of account of the mill companies, was a director in the following companies which also authorised the destruction of books of account:—

D.J. Aviation Ltd.

Authorised the destruction of books of D.J.A.
(Ex. 56)

South Asia Industries Ltd.

Authorised the destruction of books of S.S.B.
and M.D.M. (Ex. 505/243)

Delhi Glass Works Ltd.

Authorised the destruction of books of DCPM
and Gwalior Bank Ltd. (Ex. 604)

R. Sharma (deceased), who was a director of South Asia Industries, was a director of the following companies which authorised the destruction of Books:

D.J. Aviation Ltd.

Authorised the destruction of books of
DJA (Ex. 56)

South Asia Industries Ltd.

Authorised the destruction of books of S.S.B.
and M.D.M. (Ex. 505/243).



CHAPTER X

RESPONSIBILITY

We now have to assess the responsibility for the various matters that we have regarded as improper. We will consider this under the following heads:—

1. The D. J. Group;
2. R. Dalmia;
3. Those who took part in the various acts to which exception has been taken; and
4. The directors at the relevant times.

A. Selling Agencies:

The appointments of the selling agencies were made on 29-10-1948. The breaches occurred on 27-10-1950 and the compensation was settled on 28-2-1951.

There is nothing improper in the appointment of selling agents and as the agents were appointed two years before the breach, we do not think it would be right to ascribe improper motives to those concerned with the appointments simply because subsequent events were exploited for the benefit of R. Dalmia, who capable of long range planning, had the whole pattern in mind from the start. But we do not feel justified in drawing such an inference merely on the basis of subsequent events. In any case, no improper motives can be assigned to any of the others. Even if R. Dalmia had a long range plan in view, it is unlikely that he would have taken dummy directors into his confidence. As regards the breach and the compensation, we have no doubt that R. Dalmia was behind both. He has not filed a reply to our statements of matters and the evidence is strong to show that he was in control of all these four concerns. Also, it is unlikely that the other directors who were subservient to him would have taken the steps that we have outlined above on their own. There is no evidence to show that either Shanti Prasad Jain or J. Dalmia was concerned at this stage, so we do not ascribe responsibility to the D. J. Group.

The directors at the date of the breach (27-10-1950) were:

<i>S.S.B. Mills</i>	.. .. .	J. P. Jain
		S. S. L. Chordia
		K. B. L. Chordia
		V. S. Chordia
		B. L. Chokhani
		Man Mohanlal Raizada.
<i>M.D.M. Co. Ltd.</i>	.. .. .	J. P. Jain
		G. L. Chokhani
		B. L. Raizada
		S. S. L. Chordia
		B. L. Chokhani.

On 28-2-1951, the date on which the compensation was settled, the following had dropped out :

J. P. Jain

S. S. L. Chordia.

The rest were still there.

The directors of D.C.P.M. at these dates were:

V. D. Agarwal

M. K. Roy

S. R. Srivastava

P. S. Patke.

J. P. Jain did not reply to the statements of matters nor did P. S. Patke; but P. S. Patke was examined as a witness.

The three Chordias and the two Chokhanis merely raised a number of legal and technical objections but did not reply on the merits.

The two Raizadas say that they had no hand in the matter. Man Mohan Lal Raizada also says that he never attended any board meeting and so cannot say whether these matters were ever discussed there. He adds that if the matter had been referred to him it would not have "escaped his notice" as it involved payment of a large sum.

S. R. Srivastava said in his written statement that the compensation was settled by P. S. Patke on behalf of D.C.P.M., apparently without any resolution of the board, so he says that he was not "in the know of things".

B. Managing Agencies:

We will now turn to the managing agencies. Here the crucial dates are 30-8-1950 and 26-10-1950, the dates of the agreements, 27-10-1950, the date of the breach, and 28-2-1951, the date on which the compensation was settled. The directors are the same and their replies are the same.

The breaches of all 4 sets of agreements (the two selling agency agreements and the two managing agency agreements) were occasioned by the same act, namely the sale of the two mill concerns to Ram Sahani Mull More Ltd.

It will be seen from what we have said above that the three Chordias and G. L. Chokhani were directly concerned with the appointments of the managing agents, and that K. B. L. Chordia was directly concerned with the breach. G. L. Chokhani comes in again on 28-2-1951 when the question of compensation was settled between V. V. Ltd. and M. D. M. Co. Ltd. We have held that the appointments of the managing agents were fraudulent and that the appointments, the breaches, and the payments of compensation were all part of the same fraud. In view of the relationship of these persons to R. Dalmia and in view of their constant association with these several transactions, we are of opinion that the three Chordias and G. L. Chokhani knew of the fraud and were parties to it.

B. L. Chokhani came in at the last stage, but he could hardly have been ignorant of what went before when he agreed to the compensation, so we think he was also a party to the fraud, at any rate at the last stage.

As regards the other directors, we have no evidence to show that they knew anything about any of these matters, so all we can say against them is that they were negligent in the discharge of their duties because the sale of the mill undertakings with the consequent breaches of the selling and managing agency agreements are large and important matters about which they should have kept themselves informed. However, they were all dummies and were subservient to R. Dalmia. Their responsibilities compared to his are small.

We did not classify the breach of the selling agency agreements as fraudulent in our statements of matters, so we will place that under the head of Disregard of Honest Commercial Practice. The managing agency agreements were fraudulent throughout.

C. Haines Road Property:

The crucial date here is 2-10-1951.

R. Dalmia was again the master mind behind this transaction. The only others who can be said to have been responsible are the following directors:—

1. K. B. L. Chordia
2. V. S. Chordia
3. Man Mohan Lal Raizada
4. B. L. Chokhani.

We have already said that these directors were subservient to R. Dalmia and so their responsibility was only that of directors who ought to have taken a more active and independent part in the affairs of the mill.

D. Loans:

The loans to D.C.P.M. from these mills were advanced between 29-2-1948 down to 20-2-1952.

The Statements of Matters of S.S.B. Mills Ltd. and M.D.M. Co. Ltd. in regard to the loans granted to D.C.P.M. were served on the following :—

1. R. Dalmia
2. S. P. Jain
3. J. Dalmia
4. Shriyans Prasad Jain
5. Shital Prasad Jain
6. V. H. Dalmia
7. G. L. Chokhani
8. J. P. Jain
9. S. S. L. Chordia
10. M. P. Modi
11. K. B. L. Chordia
12. V. S. Chordia
13. R. L. Chordia
14. J. L. Raizada
15. B. L. Raizada
16. M. M. L. Raizada
17. B. L. Chokhani.

R. Dalmia, Shital Prasad Jain and J. P. Jain have not replied.

G. L. Chokhani, S. S. L. Chordia, K. B. L. Chordia, V. S. Chordia, B. L. Chokhani and R. L. Chordia merely challenged the Statement of Matters on legal and technical grounds.

Shanti Prasad Jain and J. Dalmia denied that the advances made by the mill companies to D.C.P.M. were instances of any alleged pattern followed by the D. J. Group. They have denied that the D. J. Group made any company, in which the public were directly or indirectly interested, to advance moneys to other companies to the detriment of the lending companies or for the benefit of the borrowing company. They have further submitted that the rate of interest on which advances were made by the mill companies to D.C.P.M. was not low specially having regard to the rate of interest on Government Securities. In any case, they were not, they added, connected with or interested in the affairs of these two companies after they had ceased to be directors in October, 1947. Shanti Prasad Jain also deposed that the financial position of D.C.P.M. was sound at the time the loans were made. Shriyans Prasad Jain's written statement is on the same lines. All the three have, however, stated that D.C.P.M. enjoyed good credit and reputation during the period they were connected with the company and further, that the advances did not result in any loss.

M. P. Modi said in his written statement that the allegations made and inferences drawn by the Commission are matters of opinion and he does not agree with them.

V. H. Dalmia in his written statement stated that he has nothing to add to the explanation given by Shriyans Prasad Jain.

M. L. Raizada stated that the facts set out in the statement of matters would show that the real beneficiary of these advances was R. Dalmia. He denied all knowledge of these loans.

J. L. Raizada in his reply stated that the directors staying at Bombay carried out the instructions of those in control of the D. J. Group and it is for them to explain why advances were given and that he had no hand in the matter. He was not a beneficiary of D.C.P.M. and did not derive any personal advantage from these loans. He also added that it was possible that the loans might have increased by a few lakhs during his period of directorship, because D.C.P.M. were the selling agents of the mill companies and as such, some arrears of sale proceeds might have accumulated in the hands of D.C.P.M.

B. L. Raizada stated that he was not a director. He was sitting at Bombay looking after realisation of arrears from the selling agents or taking any decision in regard to granting any loans and he had already submitted that he attended only one meeting.

A glance at the balance sheets of D.C.P.M. as at 28-2-1947 to 28-2-1951 will show that its financial position was not sound. Also it had huge liabilities as under:—

[illegible]

In these circumstances, the granting of such large amounts as loans to D.C.P.M. by these two mill companies and without any security cannot be regarded as having been made in good faith. These advances were made and could only have been made because of the common control over the companies concerned, at the start by the D. J. Group and later by R. Dalmia.

E. Bennett Coleman Shares

The statement of matters about this was served on R. Dalmia, J. Dalmia, Shanti Prasad Jain, Shital Prasad Jain, Shriyans Prasad Jain, B. L. Raizada, G. L. Chokhani, R. L. Chordia, V. H. Dalmia and J. P. Jain.

R. Dalmia, Shital Prasad Jain and J. P. Jain did not send any reply. G. L. Chokhani and B. L. Chordia in their replies challenged the statements of matters only on legal and technical groups.

Shanti Prasad Jain and J. Dalmia raised the following contentions in their written statements:

"It is not correct to say that the yield on the said investment of Rs. 52,92,500 in the case of the S. S. B. Mills Ltd, and Rs. 37,67,500 in the case of the M.D.M. Co. Ltd., was only Rs. 5,42,250 and Rs. 3,93,875 during the period from 31st March, 1947 to 16th November, 1951. It may be pointed out that the said 9,500 and 6,950 Preference Shares of Bennett Coleman & Co. Ltd., purchased by S. S. B. Mills Ltd., and M.D.M. Co Ltd., were Cumulative Preference Shares and dividend did accrue when not paid.....It is denied that there was a loss of interest to S. S. B. Mills Ltd. and M.D.M. Co. Ltd. It is contended that the entire basis of the allegations regarding the alleged loss of interest and the approach of the Commission in respect of this matter is erroneous.....It is denied that the loss of Rs. 33,92,500 in the case of S.S.B. Mills Ltd. and Rs. 23,97,500 in the case of M.D.M.C. Ltd., were rendered possible, because the D. J. Group was in control of S.S.B. Mills Ltd., M.D.M. Co. Ltd., D.C.P.M. and Jaipur Traders Ltd. It is submitted that the said loss was caused because of the fall in the prices of the shares which was occasioned due to steep fall between 1946 and 1951. The sale of these shares which also took place long after 31st May, 1948, when D. J. Group ceased to exist, cannot be put forward as an example of any alleged pattern of the D. J. Group."

They have further stated that the said investments were good and sound and were made for prices which were fair and proper having regard to the financial position of Bennett Coleman & Co. Ltd., and the yield on the said investments. They further contended that they were not concerned with or responsible for the alleged evasion of Income-tax liability.

In his evidence before the Commission Shanti Prasad Jain said that the Preference Shares of Bennett Coleman & Co. Ltd., were worth the price paid for them by S.S.B. Mills Ltd., as he had since ascertained from enquiries. Also, while the price paid by S.S.B. Mills Ltd., for these shares was Rs. 557 per share, that paid to the Europeans who sold these shares, was Rs. 550.

Counsel for Shanti Prasad Jain, therefore, contended that the price at which the shares of Benett Coleman & Co. Ltd., were purchased by the mill companies was reasonable; and as regards the big loss arising from the subsequent sale, it was submitted that since the sale took place after the date of dissolution, his client was not responsible for that.

Shriyans Prasad Jain has also submitted his reply on the same lines.

B. L. Raizada has stated as under in his reply:

"I do not remember to have been consulted in regard to this investment because investment in shares or otherwise were done by directors in Bombay who were more in touch with day-to-day fluctuations in shares or by persons who were in real control of the affairs of the company."

V. H. Dalmia has stated that he has nothing to add to the explanation given by Shanti Prasad Jain.

From all that has been set out above, it is evident that all this was rendered possible because the D. J. Group and later R. Dalmia was in overall control of the companies concerned. Most of the directors were close relatives and/or employees of the concerns under the control of the D. J. Group and later of R. Dalmia, and they were not in a position to act independently

The investments complained of were made in or about December 1946. We are of opinion that they were improper for the reasons that we have given. The directors at that time were,

Shanti Prasad Jain

J. Dalmia

V. H. Dalmia

Shriyans Prasad Jain

G. L. Chokhani and

J. P. Jain.

In our opinion they ought to have looked into this matter and should not have allowed the purchases. We find it impossible to justify questionable investments that did not leave enough money in the mills to carry on their day-to-day business.

The sales were effected in 1951. At that date all but G. L. Chokhani had dropped out and he was then only a director of M.D.M. Co. The interval of time between the purchases and the sale is too great to justify an inference that those who were directors at the date of the purchases knew what was going to happen to the shares five years later, so we absolve them from responsibility for the sales. But G. L. Chokhani cannot be absolved.

R. Dalmia was, however, the one really responsible for both the purchases and the sales.

In our opinion the purchases and the sales were both in disregard of honest commercial practice.

F. Liquidation, Transfer of Assets and Destruction of Books

The Statement of Matters were served on R. Dalmia, J. Dalmia, S. P. Jain, Shriyans Prasad Jain and Shital Prasad Jain, the five persons named in the notification, South Asia Industries (formerly known as LESCO), the Liquidators of the mill companies viz., R. D. Joshi and D. D. Joshi and the following directors of the companies concerned:

S.S.B.	M.D.M.	S.A.I.
V. S. Chordia	G. L. Chokhani	G. L. Chokhani
K. B. L. Chordia, and	S. S. L. Chordia, and	M. L. Sodhani
B. L. Chokhani	B. L. Chokhani	R. L. Chordia
		R. Sharma (since deceased).

R. Dalmia and Shital Prasad Jain did not send any reply.

Shanti Prasad Jain and J. Dalmia contended that they had nothing to do with these companies after 31-5-48. Also that Shanti Prasad Jain and J. Dalmia resigned from the directorships of the mill companies with effect from 29-10-47 and 28-10-47 respectively. Shanti Prasad Jain said he was never a director of LESCO and J. Dalmia said that he was not a director after acquisition of LESCO by the D.J. Group.

Shriyans Prasad Jain said in his reply that he was not concerned with the affairs of these companies after 7-12-49, when he ceased to be a director.

G. L. Chokhani, B. L. Chokhani, K. B. L. Chordia, V. S. Chordia, R. L. Chordia, S. S. L. Chordia, M. L. Sodhani and also S.A.I. Ltd., merely raised legal and technical objections.

R. D. Joshi and D. D. Joshi, the Liquidators were not held responsible for any breach of duties in the Statement of Matters; even so one copy of the statement of matters concerning liquidation was served on them with a view to elicit such information as they might be in a position to furnish.

The Liquidators, R. D. Joshi and D. D. Joshi in their reply sought to justify the action taken by them and they contended that the proposal for amalgamating the companies with South Asia Industries Ltd. was in the interest of the two companies and its contributories and that they had to accept the same in order to bring about a speedy disposal of the affairs of the companies without resorting to litigation.

Having regard to the facts and circumstances of this case as set out above and also the similar pattern that we have noticed in the case of other R. Dalmia companies, we are clear that this move first to send the companies into liquidation and then to amalgamate them with a sister company under a scheme of arrangement and thereafter to arrange for the destruction of the books of accounts and records of the transferer company was with a view to avoid and/or obviate any investigation into the affairs of the companies; and also to remove the evidence that would otherwise have been available. But, as stated earlier, the Liquidators were not specifically charged with any office in the Statement of Matters. The person who was in full and effective control of all the three companies was R. Dalmia. The other directors were mere dummies and were subservient to him. The real responsibility is that of R. Dalmia, though the directors cannot escape their share of the blame, especially G. L. Chokhani, R. L. Chordia and R. Sharma who were actively associated with the scheme to destroy the books.

VOLUME VI

PART 2

BHARAT UNION AGENCIES Ltd.
and
VASTRA VYAVASAYA Ltd.

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CHAPTER I

INTRODUCTORY

Bharat Union Agencies and Vastra Vyavasaya Ltd.

We will deal with these two companies together.

When dealing with the S. S. B. Mills and M. D. M. Co. we showed how BUA and V.V. Ltd. were fraudulently appointed managing agents of the two mill companies both of which were public limited companies. We will therefore content ourselves here with a bare outline of the facts that led up to these appointments.

B. U. A. was incorporated on 1-4-48 with an authorised capital of Rs. 5 lacs and V. V. Ltd. on 27-5-48 also with an authorised capital of Rs. 5 lacs. In both cases the paid up capital was only Rs. 19,000.

Both were private limited companies. R. Dalmia was the sole beneficiary in both cases and throughout he was in effective control of both.

On 5-7-50 the two mill companies, S. S. B. Mills and M.D.M. Co., passed resolutions appointing B. U. A. Ltd. and V. V. Ltd. as their respective managing agents with effect from 1-7-50 for periods of 20 years. But no formal agreements were drawn up at the time.

On 21-7-50 and 25-7-50 the respective managing agents issued notices to the shareholders of the respective mill companies informing them that a meeting would be held on 16-8-50 to authorise the directors of the two mills to sell their respective undertakings.

The meeting was held on 16-8-50 and the directors in both cases were given a general authority to sell. No specific proposal about the sales and their consequences was placed before the shareholders.

The formal managing agency agreements were signed on 26-10-1950 in the case of S.S.B. and B.U.A. and on 30-8-1950 in the case of M.D.M. and V. V. The signatories were—

For the S. S. B. Mills	.. V. S. Chordia
B. U. A. Ltd.	.. K. B. L. Chordia
For the M. D. M. Co.	.. S. S. L. Chordia
V. V. Ltd.	.. G. L. Chokhani

All four are related to R. Dalmia. S. S. L. Chordia is his father-in-law and the other two Chordias, who are the sons of S. S. L. Chordia, are the brothers-in-law of R. Dalmia. G. L. Chokhani is also related to R. Dalmia.

We set out the terms of the managing agency agreements when we dealt with the two mill companies. So all we need do now is to draw attention to the fact that one of the terms provided for the payment of heavy compensation in the event of a sale of the mill undertakings.

The main clause about this stipulated that in the event of a breach the managing agents were to be paid compensation for every year of the unexpired residue of 20 years at a sum equal to the average remuneration

earned by them during the 5 years immediately preceding the date of the breach.

As we said, this agreement between S.S.B. and B.U.A. was entered into on 26-10-50. On the very next day 27-10-50, the directors of the mills signed the agreement that they had been authorised to make on 16-8-50 for the sale of their undertakings. The vendee was Ram Sahai Mull More Ltd. In the case of M.D.M also the agreement for sale was signed on the same day *i.e.* 27-10-50.

The two managing agency companies claimed that this was a breach of their managing agency agreements and demanded compensation in accordance with the terms set out in them.

This dispute was settled amicably on 28-2-51 and M.D.M. Co. agreed to pay V. V. Ltd., Rs. 46,80,000 and S.S.B. Co. agreed to pay B.U.A. Rs. 73,10,000.

This bare recital of facts is enough to disclose the fraud. But when we see who acted in these transactions the last remnants of doubt must disappear. We will set out a side by side table.

		Managing Agency agreements dt. 26-10-50 (SSB & BUA) dt. 30-8-50 (MDM & V.V.)	Sale agreements dt. 27-10-50	Compensation agreements dt. 28-2-51
S.S.B.	.. ..	V. S. Chordia	K. B. L. Chordia	
B.U.A.	.. ..	K. B. L. Chordia		
M.D.M.	.. ..	S.S.L. Chordia	G. L. Chokhani	B. L. Chokhani
V.V.	.. ..	G. L. Chokhani		G. L. Chokhani

All these persons are related to R. Dalmia, in the ways that we have already shown. B. L. Chokhani is the only new name. He is a brother of G. L. Chokhani whom we have already mentioned, and so is also related to R. Dalmia through his brother.

It will be seen that in the case of the managing agency agreements the S.S.B. Mills was represented by V. S. Chordia and the managing agency company B.U.A. by his brother, K.B.L. Chordia.

In the case of the M. D. M. Mills, S. S. L. Chordia represented the mills and G. L. Chokhani represented the managing agents, V. V. Ltd.

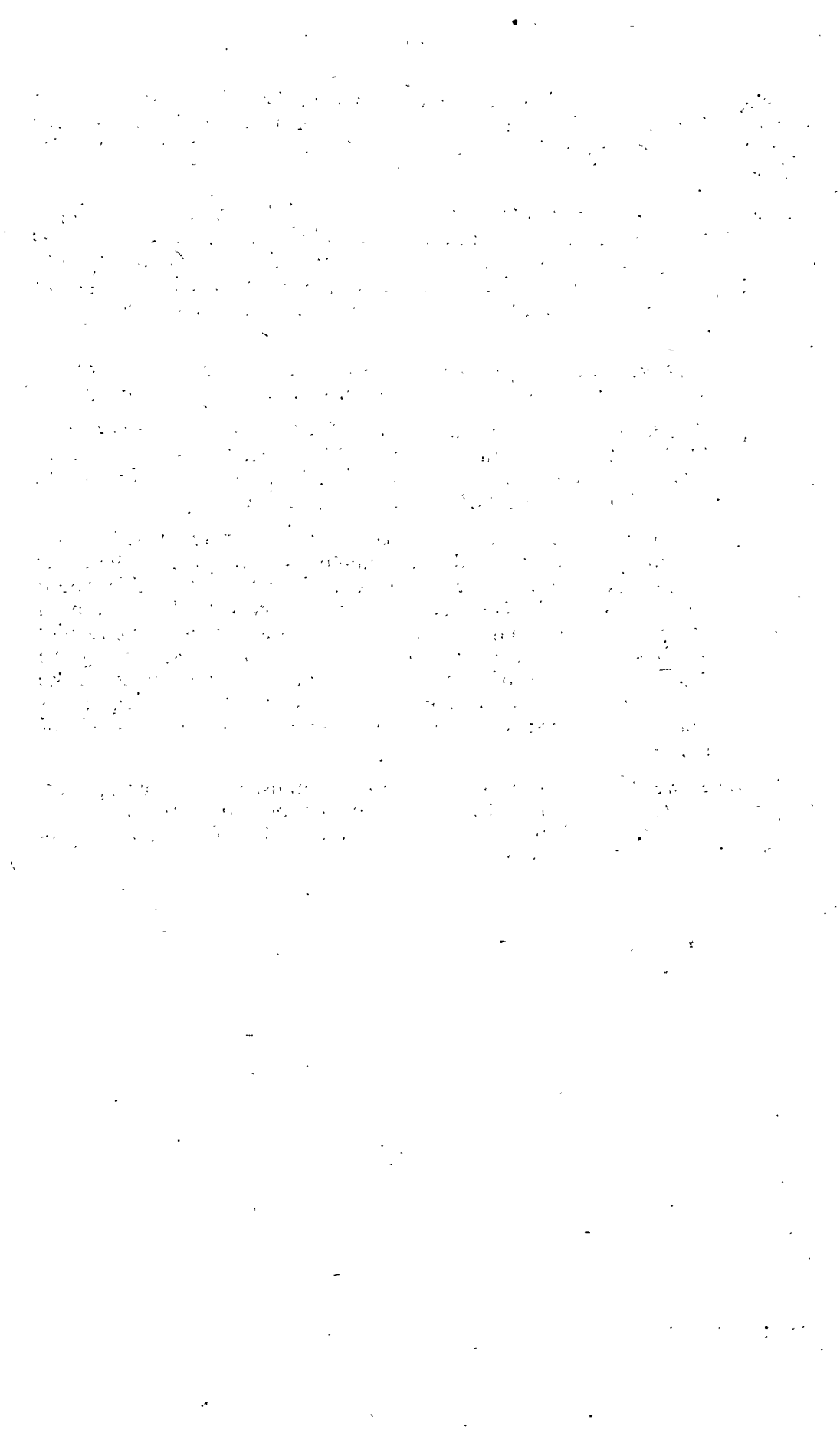
Immediately after the execution of the managing agency agreements we find a reshuffle. As we have shown, on 26-10-50 K. B. L. Chordia signed the managing agency agreement on behalf of B.U.A. On the following day the same man, K. B. L. Chordia, crossed over to the other side and acted this time on behalf of the mill company (SSB) and caused the mill company to break the agreement into which it had entered the day before at the instance of K. B. L. Chordia's brother and thus made the mill Company liable for a claim for heavy damages in the shape of compensation. Similarly in the case of M.D.M. and V.V. Ltd., we find G. L. Chokhani first signing the managing agencies agreement on behalf of V. V. Ltd., and then signing Sale agreement on behalf of M.D.M.

When the quantum of compensation came up for settlement the two brothers G. L. Chokhani and B. L. Chokhani settled the matter between themselves very much to the satisfaction and advantage of the R. Dalmia private concern, V. V. Ltd.

We need not follow this through as we set out the sequel about liquidation and the reference to arbitration very fully when dealing with the mills. We will, however, say that the liquidators did not place the arbitrators in possession of all the facts and did not plead the fraud that is patent on the face of the facts which we have set out. The arbitrators were not told,

- (i) that R. Dalmia was the sole beneficiary in the two managing agency companies that were to receive the compensation;
- (ii) that he was the beneficial owner of practically all the shares of M.D.M. Company through D.C.P.M. and L.E.S. Co. and of practically all the shares of the S.S.B. Mills through D.C.P.M., L.E.S. Co., B.U.A., M.D.M. Co., and D.D.C.;
- (iii) that the reserves of the two mill companies represented by their accumulated profits would on liquidation have gone to the other companies that we have mentioned. It is true that this would have benefited R. Dalmia, but these reserves would have been regarded as dividends in the hands of these other companies and so would have been subject to tax. But because of the fraudulent device of a breach, R. Dalmia got the benefit of the accumulated profits without having to pay tax on them as, at that time, compensation was not liable to tax in the hands of the recipients.

We have already said, when dealing with the mills, that in our opinion the gain that R. Dalmia made by this evasion or avoidance of income-tax amounted to about Rs. 13,01,535 in the case of the M.D.M. Co. and to about Rs. 17,56,635 in the case of the S.S.B. Mills.



CHAPTER II

ACQUISITION OF CONTROL

A. B.U.A. Ltd.

It will now be necessary to show how R. Dalmia obtained control of these two managing agency companies. We will deal with B.U.A. first.

B.U.A. Ltd., was incorporated as a private limited company on 1st April, 1948, with an authorised capital of Rs. 5,00,000. Shriyans Prasad Jain and J. P. Jain were the subscribers to the Memorandum and Articles of Association and each subscribed for 100 shares (Ex. 650). The moneys in respect of the shares taken by them were paid by D.C.P.M. (Exs. 659, 660 and 661).

NOTE:—The period from August, 1954, to September 1955, has been excluded from the present inquiry in view of fact that Criminal proceedings were pending in a Court of Law about certain matters that took place during this period concerning B.U.A. Ltd., and Bharat Insurance Co. Ltd.

R. Dalmia was in real control of the company from its inception to 1st April 1956, (the date up to which the inquiry is being made). The other directors of the company were subservient to R. Dalmia either being relatives or his employees or the employees of the concerns controlled by him. They were not in a position to exercise independent control. None of these directors, except R. Dalmia, had any personal stake in B.U.A. Ltd. Indirect control was also exercised by R. Dalmia because the total beneficial ownership of the B.U.A. Ltd., was held by him and his nominees, who were either his relatives or employees.

The directors of the company were as follows (Ex. 650):—

1. R. Dalmia	31-12-51 to 15-8-53
2. Shriyans Prasad Jain	1-4-48 to 1-7-48
3. P. N. Mehta	26-6-48 to 12-6-50
4. R. L. Chordia	8-6-50 to 25-9-50
5. K. B. L. Chordia	24-7-50 to Dec. 1950
6. J. S. Mittal	14-8-53 to 24-10-55
7. R. P. Gurha	14-8-53 onwards
8. L. R. Sharma	From October 1955.

P. N. Mehta was the Legal Adviser to D. J. Airways Ltd. R. L. Chordia and K. B. L. Chordia were brothers-in-law of R. Dalmia. R. P. Gurha was the Secretary of Allenberry & Co. up to July 1956. L. R. Sharma was the Secretary of South Asia Industries Ltd., Bhagwati Glass Works Ltd. and Vishwa Industries Ltd.

Shareholdings:

R. Dalmia was the sole beneficiary of B.U.A. Ltd., as may be seen below:

On 27th December 1948, 2,000 shares of the face value of Rs. 100 paid-up to the extent of Rs. 5 per share were allotted to the following persons (Ex. 650).

	No. of shares	Amount paid
		Rs.
1. R. Dalmia	1,200	6,000
2. D.C.P.M.	600	3,000
3. Shriyans Prasad Jain	100	500
4. J. P. Jain	100	500
	2,000	10,000

The above sum of Rs. 10,000 being the application money on 2,000 shares, was deposited with the Bharat Bank Ltd., by D.C.P.M. on 31st July 1948. (Exs. 659 to 661). The beneficial shareholders as on 31st March 1949 were as follows:

1. R. Dalmia	1,200 shares
2. D.C.P.M.	800 shares
	2,000

On 30th May 1950, B.U.A. Ltd., made a further call of Rs. 5 per share and the paid-up capital of B.U.A. Ltd. was increased to Rs. 20,000 (2,000 shares of the paid-up value of Rs. 10 per share) (Exs. 659 to 661). Before 31st December 1951, D.C.P.M., Shriyans Prasad Jain and J. P. Jain transferred their shareholdings of B.U.A. Ltd., to Govan Bros. Ltd., a company fully controlled by R. Dalmia (Ex. 650). The shares of Govan Bros. Ltd., during this period were held by the following persons (Ex. 441):

	Ordinary shares	Pref. Shares
1. R. Dalmia	900	—
2. S. R. Srivastava	100	—
3. Smt. Saraswati Devi, wife of R. Dalmia	9,000	30,000
	10,000	30,000

From the above shareholding position it is clear that R. Dalmia was in effective control of Govan Bros. Ltd.

The registered shareholding of B.U.A. Ltd., during the year 1951-52 was as under (Ex. 650):

1. R. Dalmia	1,200 Shares
2. Govan Bros. Ltd.	800 Shares
	2,000

There was no change in the registered shareholding of B.U.A. Ltd., during the year 1952-53 (Ex. 650). 1,000 shares of Rs. 10 paid-up were allotted to the shareholders of V. V. Ltd., on 15th June 1953, under a Scheme of Arrangement under section 208C of the Indian Companies Act, 1913 in consideration of the assets worth Rs. 46,28,802-15-3 transferred by V. V. Ltd.

to B.U.A. Ltd., (Ex. 650/59). The said shares were allotted to the following shareholders of V. V. Ltd. at the relevant time:

1. R. Dalmia	600	Shares
2. Govan Bros. Ltd.	400	Shares
	<hr/>	
	1,000	

Thus the registered shareholding of B.U.A. Ltd., as on 31st March 1954 was as under (Ex. 650):

1. R. Dalmia	1,800	Shares
2. Govan Bros. Ltd.	1,200	Shares
	<hr/>	
	3,000	

The registered shareholders of B.U.A. Ltd., as on 1st April 1956, were as follows (Ex. 654):

	Shares	Amount
		Rs.
1. R. P. Gurha	1,650	1,65,000
2. L. R. Sharma	1,600	1,60,000
3. J. S. Mittal	100	10,000
4. S. N. Dudani	1,650	1,65,000
	<hr/>	
	5,000	5,00,000

Thus on 1st April 1956, the whole of the capital of B.U.A. Ltd., was registered in the names of employees of R. Dalmia who were all subservient to him.

B. V. V. Ltd.

In the case of V. V. Ltd., the control was acquired as follows:

V. V. Ltd., was incorporated as a private limited company on 27th May 1948, with an authorised capital of Rs. 5 lakhs divided into 5,000 Ordinary Shares of Rs. 100 each. Its paid-up capital was Rs. 10,000 made-up of 2,000 shares of Rs. 100 each, Rs. 5 paid-up and a further call of Rs. 5 per share was made in 1950 which increased the paid-up capital to Rs. 20,000 (Exs. 341, 342 & 349).

G. L. Chokhani, who was Manager of Dalmia Cement & Paper Marketing Co. Ltd., (D.C.P.M. Co. Ltd), Bombay Branch, during 1948, and M. P. Dalmia, who was also an employee of D.C.P.M. Co. Ltd. in 1948, signed the Memorandum and Articles of Association of V. V. Ltd. as subscribers of Rs. 100 shares each (Exs. 650, 342 & 610). M. P. Dalmia was appointed as the first director and he continued up to June 1950 (Exs. 343 & 346). On 18th October 1949, 200 shares of V. V. Ltd., of Rs. 5 paid-up were allotted to the following—(Ex. 344) :

R. Dalmia	1,200
Dalmia Investment Co. Ltd.	600
G. L. Chokhani	100
M. P. Dalmia	100
	<hr/>
	2,000

NOTE:—During the relevant period from 18-10-59 onwards Dalmia Investment Co. Ltd., was under the control of R. Dalmia (Ex. S. 75).

V. S. Chordia, a brother-in-law of R. Dalmia (Ex. 441), was appointed a director on 8th June 1950, and continued up to 24th August 1950 (Exs. 346-348). G. L. Chokhani was appointed director on 18th July 1950, and continued up to 31st December, 1951 (Exs. 347, 351 & 352).

On 9th June 1951, the shares which were held by Dalmia Investment Co. Ltd., G. L. Chokhani and M. P. Dalmia, were transferred to Govan Bros. Ltd., a company under the control of R. Dalmia who was its sole beneficiary (Ex. 352):—

During 1951-52, the shares of Govan Bros. Ltd. were held by the following (Ex. 441):—

Name	Ordinary shares	Pre-ference shares
R. Dalmia	900	—
S. R. Srivastava .. .	100	—
Smt. Saraswati Devi (wife of R. Dalmia) .. .	9,000	30,000
	10,000	30,000

On 31st December 1951, R. Dalmia became director of V. V. Ltd. (Exs. 350 & 351). He continued up to 11th April 1953, as the sole director when the company was taken into liquidation.

The foregoing shareholding position shows that all the shares of Govan Bros. Ltd., were held and controlled by R. Dalmia, his wife and an employee, S. R. Srivastava, who was subservient to him.

From what has been set out above, it will be seen that having regard to his shareholdings in V. V. Ltd., and Govan Bros. Ltd., R. Dalmia had full and effective control over the affairs of V. V. Ltd., and was also its sole beneficiary.

Having received the sum of Rs. 46,80,000 as compensation for breach of the Managing Agency Agreement in a form that was not taxable in the hands of the recipient at that time, R. Dalmia decided to liquidate the company amalgamate it with Bharat Union Agencies Ltd., and destroy its books of account so as to—

- (i) defeat the recovery provisions of the income-tax act in respect of the realisation of the outstanding demand against the company, if any;
- (ii) bring an end to the corporate existence of V. V. Ltd.; and
- (iii) destroy evidence of the manner in which it was managed and evade and obviate any possible investigation into the affairs of the company.

On 27th February 1953, a Solvency Certificate of V. V. Ltd., signed by D. S. Singhi, Auditor, was filed with the Registrar of Companies (Ex. 354). On 4th April 1953, R. Dalmia, the sole director of V. V. Ltd., filed a declaration of solvency under section 207 of the Indian Companies Act, 1913 with

the Registrar of Companies (Ex. 355). On 11th April 1953, an Extraordinary General Meeting of the Company was held to take the company into voluntary liquidation. The meeting was attended by R. Dalmia and S. N. Dudani, who represented Govan Bros. Ltd. During this time all the 2,000 shares of V. V. Ltd., were held by R. Dalmia and Govan Bros. Ltd., as under (Ex. 352).

R. Dalmia	..	..	--	--	--	--	1,200 Shares
Govan Bros. Ltd.	..	--	--	--	--	--	800 Shares
							<hr/> 2,000 Shares <hr/>

R. Dalmia was also the sole beneficiary of Govan Bros. Ltd.

D. A. Patel was appointed Voluntary Liquidator on a remuneration of Rs. 100 (Ex. 358). The Voluntary Liquidator was given authority under sections 208C, 153A and Clauses (d), (e), (f) and (h) of section 179 and powers under section 234 of the Indian Companies Act, 1913 (Ex. 358).

Amalgamation:

On 10th June 1953, an Agreement was executed between the Liquidator of V. V. Ltd., and B.U.A. Ltd., another private limited company, under the effective control of R. Dalmia. According to this Agreement the assets of V. V. Ltd. were transferred to B.U.A. Ltd. (Ex. 360). The Agreement on behalf of B.U.A. Ltd. was signed by R. Dalmia and on behalf of V. V. Ltd. by its Liquidator, D. A. Patel (Ex. 360).

R. Dalmia was solely interested in B.U.A. Ltd. as all the shares of B.U.A. Ltd., were beneficially held by him. V. V. Ltd., on the date of the commencement of winding up, had assets of the value of Rs. 46,29,060-8-3 (Ex. 359). After meeting the liquidation expenses, V. V. Ltd., transferred the assets of the value of Rs. 46,28,803 to B.U.A. Ltd., in lieu of which the members of V. V. Ltd., were allotted shares of B.U.A. Ltd., of the face value of Rs. 10,000 (Ex. 364). The Liquidator filed his final liquidation accounts on 1st February 1954, with the Registrar of Companies (Ex. 369) and three months after that, viz., 1st May 1954, V. V. Ltd. was wound up.

Destruction of Books of Account

After taking over the assets of V. V. Ltd., B.U.A. Ltd., destroyed the books of account of V. V. Ltd., (Ex. 361).

Summonses were issued to B.U.A. Ltd. on 1st September 1958, to produce the books of V. V. Ltd. (Ex. 361). B.U.A. Ltd., in its reply, dated 24th November 1958, informed the Commission that in view of the dissolution of the company since long no records of V. V. Ltd. had been kept by them (Ex. 361).

R. Dalmia, who was in effective control of V. V. Ltd. and M.D.M. Co. Ltd., has not furnished any reply. Shanti Prasad Jain and J. Dalmia pleaded that they were not connected with or interested in this company. B.U.A. Ltd., S. N. Dudani and D. A. Patel challenged the Statement of Matters on legal and technical grounds.

Having regard to the pattern followed in other cases and the objects with which this device is adopted in this case, it is in our opinion, a clear case of disregard of Honest Commercial Practice.

The rest of the matters relating to these companies has been dealt with in our examination of the affairs of the two mill companies S.S.B. and M.D.M

(VIVIAN BOSE) (V. R. SEN) (N. R. MODY) (N. R. CHAUDHURI)

New Delhi
15-6-62

New Delhi
15-6-62

Bombay
16-6-62

New Delhi
15-6-62

VOLUME VII

PART 1

**LAHORE ELECTRIC SUPPLY
COMPANY LIMITED**

now known as

SOUTH ASIA INDUSTRIES LIMITED



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CHAPTER I

INTRODUCTORY

The Lahore Electric Supply Co., now known as South Asia Industries, was a public utility company formed for the purpose of supplying electric light and power to the town of Lahore and the surrounding areas. In September 1946, a group of persons known as the R. B. Sohanlal Group held the controlling block of shares (Exs. 505 & 522).

Under the Articles of Association of L.E.S. Co. (Ex. 643) the Bharat Insurance Company, which was a Dalmia-Jain Group concern at that time, was entitled to nominate two directors to the Board of Directors of L.E.S. Co. In pursuance of that authority, J. Dalmia, a member of the Dalmia-Jain Group, and I. D. Goswami, a Senior executive of the Dalmia-Jain Group, were so nominated. J. Dalmia remained as director till 7-11-46 when he was replaced by M. P. Modi, his sister's son. The Dalmia-Jain Group was thus in contact with the affairs of L.E.S. Co. at this time and knew what was happening to the company.

On 5-9-1946 the Punjab Government of the then undivided India took over the business of supplying electricity and power to Lahore and the surrounding areas from L.E.S.Co., under the agreements dated 2-5-1945 and 2-9-1946 (Ex. 505). Under these agreements L. E. S. Co. was to receive a large sum of money from the Punjab Government for the acquisition. L.E.S. Co. was paid on or about December 1946, Rs. 1,01,71,719, just before the Dalmia-Jain Group took over the control of this company on 21-1-1947, which was subject to adjustment either way after final valuation of the undertaking (Ex. 524). The work of valuation was entrusted to the firm of Messrs. Merz & Mclellan. The valuers handed over their reports to the Pakistan Government sometime in 1951-52 and by virtue of this valuation report, L.E.S.Co. became entitled to a further sum of Rs. 13,19,87,072 from the West Pakistan Government. During the financial year 1954-55, the Custodian of Evacuee Property, Lahore, declared L.E.S. Co. to be an Evacuee company and as a result of which the compensation claim receivable from the Government of West Pakistan became doubtful (Exs. 529 and 532).

As a consequence of Government taking over the assets of the company, the then directors of L.E.S.Co., that is to say, the ones who represented the R. B. Sohanlal Group, decided to take the company into voluntary liquidation and distribute the surplus among the shareholders, a large section of whom consisted of the general public. They accordingly passed a resolution to that effect on 23-10-1946 (Ex. 505).

Soon after this the Dalmia-Jain Group stepped into the picture on 20-1-1947 and obtained control of the company. They dropped the idea of liquidation and proceeded to milk away the company's funds for the purposes of their own concerns and to the detriment of the shareholders of L. E. S. Co. in the ways that we shall specify later.

On 20 January 1947, R. B. Lala Sohan Lal, Dewan Bahadur Dewan Krishna Kishore Dabriwala, Dewan Hari Kishan Das and Lala Sardari Lal

tendered their resignations from the Board of Directors. The remaining directors, viz., M. P. Modi and I. D. Goswami continued to be directors (Ex. 505).

On the following day, 21-1-1947, Shriyans Prasad Jain (a brother of Shanti Prasad Jain) and R. K. Jain (another relation of Shanti Prasad Jain) were co-opted to the Board of Directors of L. E. S. Co. by M. P. Modi and I. D. Goswami who were the only directors left on that date. As we have seen, they were the nominees of Bharat Insurance.

A part from the control that the Dalmia-Jain Group exercised through the Board of Directors, they held 59.9% of the total share capital on 20-1-1947 (the date of the acquisition); either personally or through their concerns and employees of their concerns; and by 31-3-1956 R. Dalmia was in 100% control. We have set out the details in our Statement of Matters and need not repeat them here.

From the moment the company was taken over by the Dalmia-Jain Group, R. Dalmia made fraudulent misuse of the funds of the company for his own purposes and for those of his concerns, instead of liquidating the company and returning the money (or so much of it as would have been left after a proper accounting) as the R. B. Sohanlal Group had resolved.

As we have shown, the R. B. Sohanlal Group resigned on 20-1-1947 and thereafter R. Dalmia exercised full control though he kept himself hidden behind the scenes. At the time the company was taken over, the Dalmia-Jain Group was in existence and jointly controlled this and other companies of the group as a group. But, though J. Dalmia and Shanti Prasad Jain have to accept vicarious responsibility, at any rate, up to 31-5-1948, there is nothing to indicate that either was actively associated with the management of this company's administration after 21-1-1947.

CHAPTER II

MISUSE OF FUNDS

We will now give a picture of the ways in which the funds of the company were misused.

When the R. B. Sohanlal Group resigned they sold the controlling group of shares, which they held to the Dalmia Jain Group at the rate of Rs. 500 a share for A class shares and Rs. 50 a share for B class shares.

According to the balance sheet of L. E. S. Co. as at 31-3-47 (Ex. 524), the intrinsic value of the understanding was Rs. 273 lacs, that is, approximately $5\frac{1}{2}$ times its nominal share capital. This sum included the Rs. 101 lacs that had been received from the Punjab Government, but it did not include the further Rs. 139 lacs receivable as compensation but considered doubtful because the company had been declared insolvent by the Custodian of Evacuee Property.

The company did not declare any dividend for the years 1946-47 to 1948-49. The first dividend was declared for the year 1949-50 on the 29th December, 1950. (Exs. 524 & 526).

R. Dalmia started acquiring the shares of the company from the investing public as soon as the company came under his effective control.

The shares from the investing public were acquired at the following rates from time to time (Ex. 366) viz.,

1948-49

(a) *From Bharat Insurance Co. Ltd.*

(in which policy-holder and investing public were interested)

							Rs.
'A' Class shares	...	...	...	...	...	@	400/- p.s.
'B' Class shares	..	..	...	..	...	@	40/- p.s.

(b) *From Investing Public*

'A' class shares of	...	...	...	...	...	—	140/- p.s.
'B' class shares of	..	..	...	...	..	—	14/- p.s. (Ex. 501)

1949-50

* *From Investing Public*

'A' class shares	...	..	..	...	...	—	120/- to 162/- p.s.
'B' class shares	...	...	..	...	...	@	12/- to 16 2/- p.s. (Ex. 501)

1950-51

From Investing public

'A' class shares	..	...	..	...	...	@	117/8/- to 130/-
'B' class shares	..	...	...	...	...	@	11/12/- to 14/- (Ex. 501)

NOTE.—Some shares were purchased at the rate of Rs. 250 to Rs. 275 for 'A' class and Rs. 25 to Rs. 27/8/- for 'B' class shares.

Thus R. Dalmia acquired the shares from the investing public at a much lower rate than the intrinsic value of the shares. Unfortunately full details of the shares acquired by R. Dalmia from the investing public were not available to the Commission.

Between 21-1-1947 and 31-3-1947, the funds of the company were transferred to D.C.P.M., another Dalmia-Jain Group concern. These funds were diverted to D.C.P.M. in the shape of loans that ranged from Rs. 35,64,391 to Rs. 1,61,01,198. We will deal with this in detail later.

Against the funds so advanced to D.C.P.M., investments in other R. Dalmia concerns were gradually transferred by D.C.P.M. to L. E. S. Co. We will give details of these transactions later. At the moment it will be enough to say that the purchases from 31-1-1950 down to 31-3-1956 were as high as Rs. 77 lacs, Rs. 114 lacs and Rs. 120 lacs in some years.

By November, 1955, R. Dalmia had acquired 100 per cent shares of L. E. S. Co. and then by a special resolution dated 5th December, 1955, L. E. S. Co. was converted into a private limited company. (Exs. 489 & 505). The Extraordinary General Meeting was attended by the following persons:—

- (1) R. D. Agarwal
- (2) M. L. Sodhani
- (3) R. P. Gurha
- (4) D. A. Patel
- (5) S. K. Sanghi
- (6) K. L. Gulati
- (7) G. S. Lakhotia
- (8) L. R. Sharma
- (9) S. N. Dudani by his proxy K. L. Gulati

All these persons were the employees of Dalmia concerns and were subservient to R. Dalmia.

The funds of Rs. 190 lakhs which came into the hands of the Dalmia-Jain Group at the date of acquisition of effective control of the company were depleted *inter alia* by the following main items of losses amounting to Rs. 161 lakhs (Ex.):—

	Rs.
S.S.B. Mills and M.D.M. Co. shares	32,33,000
S.S.B. and M.D.M. amalgamation	10,88,000
Outstanding recoveries in respect of S.S.B. and M.D.M. written off as Bad Debts in 1957-58	3,76,000
Loss on Disposal Spare Parts.	18,71,000
Loss due to taking over of the disputed claim of Allenberry from D.D.C. *	21,50,000
Manipulated loss on sale of Investment between 1956-57 and 1958-59	68,76,000
Trading loss suffered between 1956-57 and 1958-59	5,63,000
	<hr/>
	1,61,57,000

(Exs. 531, 623, 697, 737, 639 to 641, 735 to 737 and 859).

In view of these losses the intrinsic value of the undertaking according to the Balance Sheets as at 31-3-1959 (Ex. 641) came down to Rs. 18 lakhs, that is, about one-third of the nominal share capital of the Company, as against the Rs. 273 lakhs as at 31-3-1947.

This intrinsic value of Rs. 18 lacs will be further reduced if some of the contingent liabilities materialise into actual liabilities.

In our opinion these transactions constituted a fraudulent misuse of the funds of L. E. S. Co., the object of the fraud being to appropriate the funds for the use of R. Dalmia and his concerns.

We will examine in detail the two malpractices to which we have referred above in the next two chapters. We will deal first with the loans made to D.C.P.M. and later with the loans given to Asia Udyog.



CHAPTER III

LOANS TO D.C.P.M.

L. E. S. Co. granted loans to D.C.P.M. ranging from Rs. 35,64,391 to Rs. 1,61,01,198. It is admitted by Shanti Prasad Jain and J. Dalmia that D.C.P.M. was a Dalmia-Jain Group concern up to 31-5-1948; and it is proved by a statement of R. Dalmia (Ex. 845) that by October 1952, he had acquired 100% interest in D.C.P.M.

The amount of loan due to D.C.P.M. to L. E. S. Co. was as follows :—

(a) On the close of the financial years of D.C.P.M.

						Rs.			
28-2-1947	..	..	..	..	..	1,61,01,198	0	4	Ex. 879
28-2-1948	..	..	..	..	..	1,08,78,952	0	0	Ex. 496
28-2-1949	..	..	..	..	..	1,10,86,727	0	0	Ex. 496
28-2-1950	..	..	..	..	..	35,64,391	0	0	Ex. 593
28-2-1951	..	..	..	..	..	45,03,483	0	0	Ex. 238-B

(b) On the close of the financial years of L. E. S. Co.

31-3-1947	..	..	..	..	..	1,00,27,649	10	11	Ex. 524
31-3-1948	..	..	..	..	..	1,09,11,290	11	7	Ex. 525
31-3-1949	..	..	..	..	..	1,13,53,056	2	1	Ex. 526
31-3-1950	..	..	..	..	..	37,96,792	11	10	Ex. 527
31-3-1951	..	..	..	..	..	44,10,259	10	11	Ex. 528
31-3-1952	..	..	..	..	..	74,09,166	5	5	Ex. 529
29-1-1953	(few days before D.C.P.M. went into liquidation)					1,15,85,337	1	5	Ex. 727

These loans and advances were all unsecured except in one instance. D.C.P.M. was charged interest at $3\frac{1}{2}$ % a year, but, as will be seen later, the shareholders of L. E. S. Co. did not receive much benefit from that.

The loans and advances were all made by M. P. Modi, a close relation of R. Dalmia (sister's son). He had been given unlimited authority to give loans and make investments as he pleased by a resolution of 21-1-1947 passed by the Dalmia-Jain Group Board of Directors the very day they took over the company.

D.C.P.M. never returned the money advanced to it in cash, but the whole of the 'deposit' was adjusted by transferring the shares in the D. J. Group concerns to L. E. S. Co.

The D.C.P.M. account with L. E. S. Co. (Ex. 724) was finally adjusted on 31-1-1953 and at that time L.E.S. Co. was holding investments in the Dalmia concerns to the extent of Rs. 1,87,20,219 which indicates that what- ever was due from D.C.P.M. was never received back in cash but was set off against the shares of sister concerns. The better scrips were later re- transferred to other concerns of the D. J. Group before dividends were paid on such scrips.

The balance of the amount due by D.C.P.M. as on 31-1-1953, viz., Rs. 2,04,471-13-0, was adjusted by a Hundi drawn by D.C.P.M. on Bharat Union Agencies Ltd. favouring South Asia Industries Ltd. (Ex. 724). The Hundi was not realised in cash and the amount was debited to the account of B.U.A. in the books of L.E.S. Co. (Ex. 724).

The financial position of D.C.P.M. did not justify the grant of such large unsecured loans because,

(a) D.C.P.M. had large liabilities as stated below (Exs. 461, 461, 497, 237 & 238) :

	Rs.
28-2-1947	4,86,41,056
28-2-1948	5,75,32,063
28-2-1949	7,63,21,437
28-2-1950	6,81,94,162
28-2-1951	7,71,26,161

(b) Against these liabilities the principal Assets of D.C.P.M. were :

Year	Book Debts	Advances	Investments	Stock in Stores	Total
28-2-47	1,44,75,711	12,22,714	2,32,64,356	1,21,27,365	5,10,90,146
28-2-48	2,65,59,384	23,78,223	2,01,23,813	73,24,191	5,63,85,611
28-2-49	6,34,52,604	16,50,563	92,49,805	31,34,493	7,74,87,465
28-2-50	4,19,52,831	22,66,110	2,30,01,469	15,10,563	6,87,30,973
28-2-51	7,35,49,077	27,95,428	45,37,850	3,09,018	8,11,91,373

(c) The Profit & Loss Accounts of D.C.P.M. set out the position as follows:

	Rs.	
28-2-47	1,08,533 (Profit)	Ex. 460
28-2-48	2,51,756 (Profit)	Ex. 461
28-2-49	4,41,449 (Loss)	Ex. 491
28-2-50	85,518 (Profit)	Ex. 237
28-2-51	1,85,037 (Loss)	Ex. 238

D.C.P.M. did not declare any dividends on its Ordinary, Preference and Deferred Shares from 1943 to 1951 and it had no reserves except Rs. 83,021.

D.C.P.M. mainly occupied itself in the borrowing of funds from Public Companies with good liquid resources for the purposes of acquiring control and or advancing money to D. J. Concerns, for the ultimate benefit of the D. J. Group ; also purchases and sales of shares and securities. For example, within two months of the acquisition of the effective control of L. E. S. Co., liquid funds to the extent of approximately Rs. 180 lakhs were made available to D.C.P.M., D. J. Group concern. D.C.P.M. transferred shares of S. S. B. Mills and M. D. M. Co. with a view to obtaining control over these companies. These again were companies with large liquid resources and which, in turn, were principally utilised to retain a controlling interest in Bennett Coleman & Co. Ltd. which was formerly acquired out of the funds of other public companies under the control of R. Dalmia. Bennett Coleman & Co. Ltd. was yet another company with good liquid resources.

D.C.P.M. was converted into a 'Private Limited' company on 10th April, 1952. (Ex. 220).

During its financial year 1946-47 L. E. S. Co. "Deposited" at least Rs.180 lakhs with D.C.P.M. at $3\frac{1}{2}\%$ per annum, and this amount was made available by L. E. S. Co. from the following sources (Ex. 523) :—

	Rs.
(a) Advanced from undivided Punjab Govt. against compensation for Lahore and Shahdra undertakings	1,01,71,719
(b) Govt. Securities	63,56,172
(c) Cash & Bank Balances	21,33,659
TOTAL ..	<u>1,86,61,550</u>

In the end D.C.P.M. was taken into Voluntary Liquidation on 18-2-1953. (Ex. 225).



CHAPTER IV

LOANS TO ASIA UDYOG

We have examined the fraudulent loans made to D.C.P.M. Similar loans, also fraudulent, were made to two other R. Dalmia concerns. One of them was a loan of Rs. 125 lakhs given to Asia Udyog.

Asia Udyog was originally Dalmia-Jain Aviation. At the outset Dalmia-Jain Aviation was a public limited company but it was converted into a private limited company on 26-4-1952. (Exs. 223 & 56). It was an R. Dalmia concern throughout.

On 23rd May, 1953 the name of D. J. Aviation was changed to Asia Udyog Ltd.

After this, the shares of Asia Udyog Ltd. were held by South Asia Industries Private Ltd.; Bharat Union Agencies Ltd.; M/s. Edward Keventer(s), Ltd.; Allenberry & Co. Ltd. etc. all Dalmia concerns.

At no time was even single share of Asia Udyog Ltd. held by any person outside the Dalmia circle.

After D.C.P.M. went into liquidation on 18-2-1952 all the available funds L. E. S. Co. were locked with Asia Udyog and Bharat Union Agencies so that L. E. S. Co. was not able to meet even its day-to-day expenses. These expenses were financed by the two companies just mentioned. As we have said, they took all the funds of L. E. S. Co. (Exs. 697 to 700, 733 & 735).

By the 22nd of April, 1955, L. E. S. Co. had changed its name to South Asia Industries. It held a meeting of its Board of Directors in its new guise on that day at 8 p.m. The minutes (Ex. 505) record that an offer was received from Edward Keventers of Delhi for the purchase from South Asia Industries, of certain shares of Bennett Coleman, Jaipur Udyog and Asia Udyog. It was thought that about Rs. 125 lakhs would be realised if this sale went through.

The minutes also show that it was resolved that a further Rs. 250 lakhs of Jaipur Udyog ordinary shares should be disposed of if a suitable offer was received.

This raised a discussion about how these moneys should be invested if and when they were received. The minutes record that it was understood that Asia Udyog might accept the money as a deposit at $4\frac{1}{2}\%$ interest, either for a fixed period or returnable at short notice varying from one to two months.

The minutes also show that a resolution was passed authorising R. D. Agarwala to negotiate and arrange with Asia Udyog for investing the funds of the company, as and when they were available, by way of fixed deposit for a period of 12 months, or at short notice varying from 1 to 2 months, after some specified period, at a rate of interest of $4\frac{1}{2}\%$ per year.

Another resolution passed at that meeting said that a further 2,50,000 ordinary shares of Jaipur Udyog ordinary shares should be disposed of if a suitable offer was received.

This meeting was attended by M. L. Sodhani who was a common Director of Asia Udyog and South Asia Industries. But he did not vote as he was an interested director. It was also attended by R. D. Agarwala who joined the Board of Directors of L.E.S. Co. the same day; so he was also a common director.

The entries in the books of account of L. E. S. Co. (Ex. 697) show that on 31st May, 1955 shares of the value of 1 crore 6 hundred rupees were transferred to Edward Keventers. No payment was received in cash. The journal entry (Ex. 697) shows that this amount was debited to the account of Asia Udyog. On 30th June, 1955, 2,50,000 shares of Jaipur Udyog Ltd. of Rs. 10 each were transferred to Dalmia Dadri Cement Ltd. The Journal entry (Ex. 697) shows that Dalmia Dadri Cement Ltd. discharged this liability to pay the Rs. 25 lakhs, not by a payment in cash, but by a Hundi drawn on Rajasthan Udyog Ltd., in favour of L. E. S. Co. The amount of the Hundi was not realised in cash by L. E. S. Co.; instead; the amount was debited to the account of Asia Udyog on the same day.

Thus, no cash passed at any time, and valuable investments owned by L. E. S. Co. were transferred without receiving any consideration except an unsecured indebtedness of Asia Udyog Ltd. The resolution regarding arrangements with Asia Udyog Ltd. was passed by only one director and the terms of the purported deposit were left to be arranged by one director only, Shri R. D. Agarwala.

M. L. Sodhani was a common director of South Asia Industries Ltd., and Asia Udyog Private Ltd.

The loan by South Asia Industries Ltd. to Asia Udyog Private Ltd. was in contravention of the provisions of section 86-D of the Indian Companies Act, 1913, resulting in the application of section 86-I.

The bulk of these investments in Bennett Coleman & Co. Ltd., and Jaipur Udyog Ltd., ultimately reached Bharat Union Agencies, which company transferred them to Sahu Jain Ltd. pursuant to an agreement, dated 4th October, 1955 in order to enable R. Dalmia to pay his personal speculation losses carried on in Bharat Union Agencies. The real object of transferring these investments from L.E.S. Co. to Edward Keventer(s) was to enable those shares to be used for personal purposes.

Asia Udyog never returned this large amount in cash, but in December, 1955 and January, 1956 it got transferred to South Asia Industries Ltd. shares of the Dalmia companies amounting to Rs. 1,21,03,525 (Ex. 697) and thus reduced the indebtedness to Rs. 3,96,475 only.

On 24th January, 1956 interest amounting to Rs. 3,03,525 for the period of May, 1955 to December, 1955 was debited to 'Deposit' Account which increased the indebtedness of Asia Udyog in the books of L.E.S. Co. to Rs. 7,00,000. (Ex. 697).

In January, 1956 by a Board Resolution (Ex. 505) the amount of Rs. 7,00,000 due from Asia Udyog was converted into a fixed deposit for a period of two years carrying interest @ 4½%. Thus South Asia Industries granted Asia Udyog two years time to repay this amount which was unsecured.

On this deposit South Industries earned Rs. 5,868-9-0 as interest up to 31st March, 1956. This also was not realised in cash, but was debited to its account.

CHAPTER V

LOANS TO PATIALA BISCUITS

The next set of loans was to Patiala Biscuits. The amount of the loans was Rs. 13,37,734-15-6. They were partly secured and partly unsecured. Patiala Biscuits was required to pay interest as follows :

On Rs.	10,52,240-14-6	@ 5% per year (Exs. 505 & 697)
Rs.	55,494- 1-0	@ 6% per year (Exs. 505 & 697)
Rs.	2,30,000- 0-0	@ 6% per year (Exs. 505 & 697)

Of these only the first was secured as a *second* charge on the fixed assets.

Patiala Biscuits Mfr. Ltd. is a Public Limited Company under the control of R. Dalmia.

It was incorporated on 21-8-1943 with an Authorised Capital of Rs. 1 crore of which Rs. 30,09,070 was paid up.

The shares of this company were invariably registered in the names of individuals, who were closely associated with the Dalmia companies, *viz.*, S. N. Dudani, R. P. Gurha, T. A. Desai, Vishnu Kumar and R. D. Agarwala (Ex. 442).

South Asia Industries agreed to advance Rs. 16,50,000 to Patiala Biscuits Mfr. Ltd. against the subrogation of the Mortgagee rights created in favour of Bharat Union Agencies Ltd., and the Bank of Patiala, Rajpura (Ex. 505).

The terms of the agreement are not known, but the Board Resolution dated 3rd January, 1956 (Ex. 505) in this regard is as below :—

“Resolved that the draft agreement placed before the Board by Shri R. D. Agarwala, Director for advancing the loan of about Rs. 16,50,000 to Patiala Biscuits Mfr. Ltd., Rajpura, against the subrogation of the mortgagee rights created by the said Patiala Biscuits Mfr. Ltd., Rajpura in favour of Bharat Union Agencies Ltd. and Bank of Patiala, Rajpura, and signed by the Chairman of the meeting for indentification purposes be and is hereby approved.”

But according to the books of accounts of South Asia Industries, Rs. 10,52,240-14-6 were advanced @ 5 per cent per annum by drawing a Hundi on Asia Udyog in favour of Bharat Union Agencies on behalf of Patiala Biscuits. (Ex. 697).

Patiala Biscuits raised a loan of Rs. 10,00,000 from Bharat Union Agencies Ltd., on 21st December, 1954. The particulars of the charges were not filed for registration with the Registrar of Companies, PEPSU within the statutory time limit of 21 days, so Patiala Biscuits applied for relief to the High Court under section 120 of the Indian Companies Act, 1913. The charge was registered by the Registrar of Companies, PEPSU after Patiala Biscuits was granted relief by the Court. This charge was satisfied on 7th January, 1956 and on the same date the company raised a loan

of Rs. 10,52,240-14-6 from South Asia Industries, by the creation of a second charge on its factory at Rajpura. (Exs. 697 & 505).

That transaction shows that the loan of Bharat Union Agencies was paid by South Asia Industries.

The loan was not repaid by Patiala Biscuits up to 31st March, 1956, nor was Rs. 12,252-2-0 due on account of interest up to 31-3-1956 received in cash. Instead, the sum was debited to the loan account and the amount was carried forward. (Ex. 697).

Another loan of Rs. 55,494-1-0 was granted to Patiala Biscuits between January and March, 1956. (Ex. 697).

The details of that are as under:

Date	Particulars	Amount
		Rs.
23-1-56	T.T. sent through Bank	10,000- 0-0
27-1-56	Cash to L.C. Modi	10,230-13-0
11-2-56	Draft No. 632 & 385	17,757-10-9
14-3-56	Draft No. 723 & 907	17,497- 8-6
		55,494- 1-0
31-3-56	Amount of interest	420- 0-0
		55,914- 1-0

On 31st January, 1956 another loan of Rs. 2,30,000 was granted to Patiala Biscuits @ 6 per cent per annum. (Ex. 697). This sum was advanced by Asia Udyog on behalf of South Asia Industries.

The interest for the period from 31st January, 1956 to 31st March, 1956 amounting to Rs. 2,300 was not paid in cash but was debited to 'Pro-Note' account and the debit balance of Rs. 2,32,300 was carried over to the next year. (Ex. 697).

South Asia Industries Ltd. was converted into a 'Private Limited' Company on 5th December, 1955, by passing a special resolution at an Extraordinary General Meeting of the shareholders held on 5th December, 1955 (Ex. 505).

The loans to Patiala Biscuits were shown in L.E.S.Co.'s Balance Sheet as at 31-3-1956 under the head "Book Debts" (Ex. 638). This was a deceptive description and the auditors, M/s. Sodhbans & Co. did not report to the shareholders about this deceptive description.

The financial position of Patiala Biscuits was not sound as will be seen from the following figures (Ex. 862):

Liabilities :

Reserves	Loans	Current Liabilities	Total
Nil	Rs. 14,38,681	Rs. 2,34,742	Rs. 16,73,423

Against these liabilities the only principal *Liquid Assets* of the company were :—

Stock Stores Sundry Debtors	Loans and advances	Cash and Bank Balance	Total
Rs. 5,30,727	Rs. 74,420	Rs. 34,141	Rs. 6,39,288

Patiala Biscuits thus had accumulated losses to the extent of Rs 23,35,698 against its paid-up capital of Rs. 30,09,070.

The profit of Rs. 2,44,681-9-10 shown in Ex. for the year ending 31-12-56 was arrived at after crediting the following items extraneous to the manufacturing activities of this company :—

	Rs.
(i) Dividends received	2,85,540
(ii) Profit on sale of Investment	2,04,737
	<hr/> 4,90,277 <hr/>

This shows that the manufacturing activities of the company were running into a loss as before.

This is another instance of the pattern followed by the Dalmia Jain Group of making a company in which the public were directly or indirectly interested to advance moneys without any security at low rates of interest to companies in which R. Dalmia was mainly interested, for the benefit of those companies and R. Dalmia and to the detriment of the lending company in which the public were interested.

The manner in which the loans of D.C.P.M. and Asia Udyog Private Limited were sought to be repaid is also another instance of the pattern whereby the repayment was not intended to take place in the form in which it was given namely 'Cash', but by making book adjustments, viz., by transferring the shares of one or other companies in the D. J. Group at prices best suited to the convenience of the D. J. Group.

The objects of the loans were

(a) To utilise the funds of L.E.S.Co. for the benefit of R. Dalmia and his concerns, in particular, D.C.P.M., Asia Udyog Private Ltd., and Patiala Biscuit Manufacturers Ltd., in order to enable him,

- (i) to acquire and/or retain the companies under his control, such as Sir Shapurji Broacha Mills Ltd., Madhowji Dharamsi Mfg. Co. Ltd., Bennett Coleman & Co. Ltd., Edw. Keventer(s) Ltd. etc.
- (ii) to use the funds for starting a new concern, viz., Jaipur Udyog Ltd.
- (iii) to advance funds to R. Dalmia. Such advances to R. Dalmia on the close of the financial years of D.C.P.M. were as follows :—

	Rs.
As on 28-2-1948	17,28,736 (Ex. 496)
As on 28-2-1949	53,73,879 (Ex. 496)
As on 28-2-1950	78,11,973 (Ex. 593)
As on 28-2-1951	1,52,13,695 (Ex. 577)

(b) To finance and assist the Dalmia concerns viz., D.C.P.M., Asia Udyog Ltd., and Patiala Biscuits Mfr. Ltd.

It is our view that the loans granted to the above companies were no granted in good faith and cannot be justified on any normal business ground.

The persons responsible are

(a) Primarily the then directors for advancing the loans and for the deceptive description of the same in the Balance Sheets :

1. Shriyans Prasad Jain
2. Shital Prasad Jain
3. Ram Swarup Jain
4. I. D. Goswami
5. M. P. Modi
6. R. K. Jain
7. V. S. Chordia
8. R. L. Chordia
9. R. Sharma
10. M. L. Sodhani
11. G. L. Chokhani
12. R. D. Agarwala
13. T. A. Desai, and
14. Vishnu Kumar.

(b) But Nos. 3 to 14 were 'Dummies' and the persons really responsible were R. Dalmia who held control and his relations Shriyans Prasad Jain and Shital Prasad Jain.

(c) The then auditors, M/s. Sodhbans & Co. for certifying the Balance Sheets and not reporting in their Audit Report to the shareholders about the deceptive description of these loans in the Balance Sheets. Also Besantram & Sons in respect of the Balance Sheets as at 31-3-1947.

CHAPTER VI

DECEPTIVE PRESENTATION OF THE LOANS IN THE BALANCE SHEETS

These loans have been wrongly described as "deposits" in the balance sheets.

At the time of the acquisition of control of this company by the D. J. Group on 20th January, 1947, the Company had the following liquid resources :—

	Rs.
Government Securities	63,56,172
Balances with Banks	21,33,659
Compensation received from the undivided Punjab Government	1,01,71,710
	1,86,61,550

The bulk of these funds were made available immediately to D.C.P.M. so that on 28th February, 1947, being the financial year end of D.C.P.M. the latter owed LESCO Rs. 1,61,01,198-0-4, whereas on 31st March, 1947, which was the closing of the financial year of LESCO, Rs. 1,86,61,550 made available to the D. J. Group were disposed of as follows :

Investments in SSB Mills	54,44,000	79,92,000-0-0
Investments in M.D.M. Mills	25,48,000	1,00,27,649-10-11
Deposits		1,80,19,649-10-11

The S. S. B. and M. D. M. Mills were acquired by the D. J. Group in October, 1946, so that a part of the funds of LESCO, made available to D.C.P.M., were invested in the two Mills Companies, and the two Mill Company shares were then given to LESCO to reduce the indebtedness of D.C.P.M.

On 31st March, 1848, the position was :

Investments as above	79,92,000-0-0
Deposits	1,10,11,290-11-7
	1,90,03,290-11-7

and on 31st March, 1949, the position was :

Investments as above	79,92,000-0-0
Deposits	1,13,53,056-2-1
	1,93,45,056-2-1

The so-called "Deposits" represented moneys made available to D.C.P.M. but this was nothing more than a loan, as is discussed below, and that fact was sought to be hidden from the shareholders by giving a wrong description.

The account for all these years were reported upon by Messrs. Sodhbans & Co., and for the year ended 31st March, 1947, by Messrs. Basantram &

Sons also. There is no doubt that the deposits were nothing but loans, and the auditors should not have allowed the loans to be so described in the respective Balance Sheets, or alternatively, if the management insisted on retaining this nomenclature, they should have qualified their report to the shareholders in this respect.

The expression "Deposit" has been defined in "A Dictionary for Accountants" by Eric L. Kohler, Certified Public Accountant, (2nd Edition) on page 164, as follows :—

"Deposit : 1. Currency, checks, or coupons presented to a bank by or for a customer for credit to his account. The deposit may be credited to a general or 'checking' account, from which unrestricted withdrawals are made by means of checks, or it may be credited to a special account, established for some specific purpose, and subject to withdrawal in accordance with the terms of the deposit arrangement.

2. Money, securities, or other valuable temporarily lodged with others."

It will be seen from the above that the "Deposit" with D.C.P.M. cannot fall under paragraph 1 of Kohler's definition; but if all at, it comes within paragraph 2; but the emphasis is on word "*temporarily*". Therefore, per contra if moneys have been lodged with others, other than temporarily, they cannot be described as "Deposits". The idea of describing loans as deposits, and furthermore to show them under the heading of Investments, gave the shareholders of LESCO a deceptive description and made them think that the Company had invested the money in fruitful ways. In fact, it was nothing but loans to the D. J. Group.

As we have stated above, Basantram & Sons reported on the accounts only for the year ended 31st March, 1947. Their explanation is that they did not doubt the honesty or integrity of the directors of the company with whom they had but very short contact during a period of two and half months and as auditors, it was their duty only to examine the books of account and report whether the Balance Sheet exhibited a correct view of the company's accounts.

It is not correct to say that the auditors had contact with the management for a short period of only two and a half months in the present case, because the auditors report on the account for the year ended 31st March, 1947, bears the date 9th November, 1948. Therefore, although the end of the year was within two and a half months of the management taking over, the contact was much longer than that, because the audit was not completed until November, 1948; but that is neither here nor there.

Basantram & Sons have stated further that "the amount of D.C.P.M. was shown as a deposit and so did the auditors put in the Balance Sheet". However, later on in their statement they are not quite sure, because they state, "This was under the heading INVESTMENT and *could be taken as deposit payable within interest at 3½ per cent. It was not the duty of the auditors to probe into the matter whether it was a deposit or loan when in the account books of the company it was clearly shown as a deposit*".

The above quoted paragraph can be analysed as under—First of all, Basantram & Sons state that because the deposit was under the heading of

INVESTMENT it 'could be' taken as deposit. Secondly, that it was not their duty to inquire into whether it was a deposit or a loan and because the company's books showed it as a deposit, they concluded that it was a deposit. We fail to understand this, and can only say that the description was allowed to be used to hide the fact from the shareholders that a loan of a very large amount viz., Rs. 1,00,27,649-10-11 (as at 31st March, 1947) was given to D.C.P.M.

Now let us see what Sodhbans has to say. He merely dismisses the whole thing by stating that the amount shown as deposit with D.C.P.M. was a deposit and therefore it does not in any way contravene the provisions of Section 86D of the Indian Companies Act, 1913. He has not given any reasons to maintain why this should have been classified as a deposit, but as regards contravention of Section 86D, he has stated that under the Indian Companies Act, 1913, it was not necessary for private companies to add the word "Private" in their name, as now required under the Companies Act, 1956, and therefore, the auditors could not know whether the companies in which the deposits were made were private limited companies, and the directors were directors or members of such private limited companies. He further states that the auditors unless they had suspicion in their minds, could not make any investigations, because they are watch dogs and not blood hounds. What we have stated above regarding Basant-ram & Sons applies to Sodhbans right the way up to 31st March, 1949. He then suddenly realises that he ought to make it clear to the shareholders that the moneys have been "deposited" with D.C.P.M., because in the Balance Sheet as at 31st March, 1950, the name of D.C.P.M. has been mentioned "against deposit Rs. 37,96,792-11-10". However in 1951, this description was changed to "Deposits with a Joint Stock Company Rs. 44,10,269-10-11" and he maintained this description in the Balance Sheet as at 31st March, 1952.

In the end D.C.P.M. was taken into voluntary liquidation in February, 1953.

We saw that the loans made to the D.C.P.M. were misleadingly described as "deposits" in the Balance Sheets and were so passed by the auditors. There was a similar misdescription in the loans made to Patiala Biscuits, only in this case the loans were called "book debts".

Similarly, between January and March, 1956, the following sums were given as loans to the Patiala Biscuit Manufacturing Co. Ltd. :—

- (1) Rs. 10,56,240-14-6
- (2) Rs. 55,494-1-0
- (3) Rs. 2,30,000-0-0

These loans have been described in LESCO's Balance Sheet as at 31st March, 1956, as 'book debts'. There can be no two opinions as to what constitutes a "book debt", and what constitutes a "loan". at least it should have been in the mind of an Accountant who professes to be an experienced Accountant like Sodhbans, and as he has stated on many occasions before us "one of the oldest practitioners in the country". However, he has stated in his Written Statement that the words "debt" and "loan" are synonymous and by adding the word "book" to the "debt", "it does not mean that it becomes a credit and not a loan, which is a debit entry". He goes on to state that "book debt is a loan for all intents and purposes and it is really

surprising that the Commission should have taken objection to this description and called it deceptive". "Any man", he avers, "reading the Balance Sheet can well understand that book debts are loans recoverable from a debtor".

We are convinced that this was a deceptive description to hide the fact from the shareholders that the Patiala Biscuit Mfg. Co. Ltd. was given a loan from the funds of LESCO, because there can be no doubt that a book debt is an outstanding due from a debtor created in the normal course of the Company's trading or activities, and a loan is nothing but moneys advanced to be returned at a future date. Therefore, the first outstanding arises from the supply of goods and/or services by a company of the type of goods and/or services, in which the particular company normally deals and the second in respect of moneys advanced by a company. Sodhbans could not have mixed up the two.

The auditors are, therefore, responsible for allowing the deceptive description to be used without any comment, and were a party to the fraud perpetrated on the shareholders.

However, as far as Basantram & Sons are concerned, they were auditors jointly with Sodhbans & Co., for the year ending 31-3-1947 only. It can perhaps be argued they genuinely felt that the deposit with D.C.P.M. was really in effect moneys deposited to be returned with interest in a short time, and they therefore, since they did only one audit after the Dalmia Jain Group acquired control, could not have the subsequent history. In any case, Sodhbans had sufficient history before him because he did the audits for many years.

CHAPTER VII

BUYING AND SELLING OF SHARES

The second fraudulent malpractice to which we referred is this. We find that L. E. S. Co. bought and sold the shares of joint stock companies in which R. Dalmia was interested at frequent intervals to enable him to use the funds of this public limited company for the ultimate benefit of himself and his concerns in the following circumstances :

- (a) To enable R. Dalmia to retain the control of the following newly acquired companies, Bennett Coleman & Co. Ltd., S. S. B. Mills Ltd., and M.D.M. Co. Ltd.
- (b) To use the funds of L. E. S. Co. for retaining R. Dalmia's control over a company newly floated by R. Dalmia viz., Jaipur Udyog Ltd.
- (c) To reduce the liability of D.C.P.M., B.U.A., and A. U. Ltd. by book adjustments and thus to represent in the Balance Sheets of L. E. S. Co. as on 31-3-1947 to 31-3-1956 that the company held valuable investments in place of inter-company indebtedness.
- (d) To reduce the burden of interest liability of D.C.P.M. and A. U. Ltd. even though the interest was only $3\frac{1}{2}\%$ in case of D.C.P.M and $4\frac{1}{2}\%$ in case of A. U. Ltd.

The proof of that is as follows. When the Dalmia Jain group acquired effective control of L. E. S. Co. on 20-1-1947, the following funds belonging to the company were made available to them (Ex. 523).

	Rs.
Government securities	63,56,172
Balances with banks	21,33,659
Compensation received from the undivided Punjab Government	1,01,71,719
	<u>1,86,61,550</u>

On the following day, 21-1-1947, M. P. Modi was authorised to deal with the funds and investments of the company (Ex. 505).

Instead of returning the money to the shareholders (or so much of it as would have been left after a proper accounting) as the R. B. Sohanlal Group had resolved, D.C.P.M. was given the bulk of the funds immediately so that on 28-2-1947, Rs. 1,61,01,198 had already gone to D.C.P.M. (Exs. 524 and 579).

This has been considered by us when dealing with D.C.P.M.; but the following resume will indicate the loss to the shareholders of L. E. S. Co. and the benefit to the Dalmia concerns, especially to the private limited companies.

The following table will show the value of the total purchases and sales of the shares in each of the following financial years and the value of shares held at the close of each of those financial years.

Financial year ended on	Opening Balance	Purchases during the year	Sales during the year	Closing Balance
31-3-48	79,92,000	—	—	79,92,000
31-3-49	79,92,000	—	—	79,92,000
31-3-50	79,92,000	77,45,113	—	1,57,37,113
31-3-51	1,57,37,113	32,38,520	39,61,525	1,50,14,108
31-3-52	1,50,14,108	7,043	35,66,714	1,14,54,437
31-3-53	1,14,54,437	1,14,92,732	42,26,250	1,87,20,919
31-3-54	1,87,20,919	5,50,000	25,77,450	1,34,59,719
			32,33,750 (loss)	
31-3-55	1,34,59,719	19,82,979	20,95,531	1,33,47,167
			2,16,969 (profit)	
31-3-56	1,33,47,167	1,20,31,284	1,38,68,128	1,15,10,323
			37,472 (profit)	

NOTE : (i) 31-3-53 :

The figure of Rs. 42,26,250 includes Rs. 41,76,250 by way of return of capital and surplus from S.S.B. and M.D.M. Co.

(ii) 31-3-54 :

(a) The figure of Rs. 25,77,450 includes Rs. 5,82,000 received by way of return of surplus from S.S.B. and M.D.M. Co.

(b) Rs. 32,33,750 written off in respect of the shares of S.S.B. and M.D.M. Co.

(c) The figures of Rs. 5,50,000 and Rs. 25,11,450 excludes the receipts of 1,750 shares of Dadri Marketing Ltd. in exchange of 30,000 ordinary and 50,000 Deferred shares of Rajputana Investment Ltd.

(iii) 31-3-55 :

Details of the Profit of Rs. 2,16,968-12-0 are as follows :—

- (1) 80,000 Ordinary Shares of Allenberry & Co. Ltd.
- (2) 400 Pref. Shares of Asia Udyog Ltd.
- (3) 30,000 Ord. Shares of Edward Keventer(s) Ltd.
- (4) 250 Pref. Shares of Edward Keventer(s) Ltd.
- (5) 20,000 Pref. Shares of Govan Bros. Ltd.
- (6) 1,750 Ord. Shares of C. Lazarus & Co. Ltd. (in liq.)
- (7) 1,750 Pref. Shares of C. Lazarus & Co. Ltd. (in liq.)
- (8) 1,750 Shares of Dadri Marketing Ltd. (in liq.)

(iv) 31-3-56 :

Rs. 37,471-8-0 represents the profit made on the shares of Jaipur Udyog Ltd. sold to D.D.C. Ltd.

The affairs of the companies in the shares of which investments were made were controlled by R. Dalmia.

Of these companies at the dates of the investments, the following were Private Limited Companies :—

1. Allenberry & Co. Ltd.
2. Bennett Coleman & Co. Ltd.
3. Jaipur Udyog Ltd.
4. Govan Brothers Ltd.
5. D. J. Aviation Ltd. (Later on Asia Udyog Ltd.) after 26-4-1952.
6. Edward Keventer(s) Ltd.
7. Rajputana Investment Ltd.
8. Pepsu Trading Co. Ltd.
9. Dadri Marketing Ltd.
10. Rajasthan Udyog Ltd.
11. Allenberry (Calcutta) Ltd.
12. Bharat Development Ltd.

The following were Public Limited Companies :—

1. S.S.B. Mills Ltd.
2. M. D. Mfg. Co. Ltd.
3. Bharat Insurance Co. Ltd.
4. Raza Sugar Co. Ltd.
5. Gwalior Bank Ltd.
6. D. C. & P. M. Co. Ltd.
7. C. Lazarus & Co. Ltd.
8. D. J. Aviation Ltd. up to 26-4-1952.
9. Buland Sugar Co. Ltd.
10. Dalmia Dadri Cement Ltd.
11. Indian National Airways Ltd.

The amount invested by L. E. S. Co. in the shares of the above Private and Public Limited Companies was as follows :—

Financial year ending	Invested in the shares of Public Ltd. Companies	% of total investment	Investments in the shares of Private Ltd. Companies	% of total investments	Total
31-3-47	79,92,000	100%	—	—	79,92,000
31-3-48	79,92,000	100%	—	—	79,92,000
31-3-49	79,92,000	100%	—	—	79,92,000
31-3-50	1,34,87,113	86%	22,50,000	14%	1,57,37,113
31-3-51	1,20,14,108	81%	30,00,000	19%	1,50,14,108
31-3-52	84,54,438	74%	30,00,000	26%	1,14,54,438
31-3-53	42,87,225	23%	1,44,33,694	77%	1,87,20,919
31-3-54	4,71,475	3%	1,29,88,244	97%	1,34,59,719
31-3-55	9,038	-06%	1,33,38,129	99.4%	1,33,47,167
31-3-56	16,59,738	14%	98,50,585	86%	1,15,10,323

Payments for the purchases and receipts of the sale proceeds in most of the cases were credited and debited respectively to the account of D.C.P.M. up to January 1953 and thereafter to other companies such as Bharat Union Agencies Ltd., Asia Udyog Ltd. etc.

The investments on the above shares cannot be justified on normal business grounds especially in the case of a public utility company where the purpose for which it had been created ceased to exist.

First consider the position from the dividend angle. The dividend income on the shares purchase as above was as follows :—

	Rs.	% on the amount invested
31-3-47	Nil	
31-3-48	2,65,000- 0-0	3.3%
31-3-49	2,52,000- 0-0	3.1%
31-3-50	2,76,711-14-0	1.7%
31-3-51	2,93,023-14-0	1.8%
31-3-52	1,857- 4-0	.02%
31-3-53	858-12-0	.01%
31-3-54	805- 8-0	.01%
31-3-55	704- 0-0	.01%
31-3-56	26,799- 4-0	.2%
	11,17,760-10-0	

The above dividends were received on the shares of the following companies :—

- (1) S.S.B. Mills Ltd.
- (2) M. D. Mfg. Co. Ltd.
- (3) Bharat Insurance Co. Ltd.
- (4) Jaipur Udyog Ltd.
- (5) Raza Sugar Co. Ltd.
- (6) Buland Sugar Co. Ltd.

That shows that these investments cannot be justified on the ground of yield.

Another unbusinesslike procedure was that though the shares were shown to have been beneficially owned they were invariably not registered in the name of L.E.S. Co. but continued to remain in the names of certain individuals or companies.

Also none of the shares were quoted on the stock exchange except S. S. B. Mills, M. D. M. Co., Bharat Insurance, Raza Sugar and Buland Sugar.

There is, of course, nothing improper in investing money in companies that are not quoted on the stock exchange provided they are good and sound and the money is for *bona fide* investment. But it is a different case when there is constant buying and selling for no apparent reason. Manipulation of prices is then easy; and that very thing seems to have happened here because the same type of shares were bought at varying rates

at short intervals. In any case, see the type of company in which these investments were made. Of the 33 no less than 13 companies were taken into liquidation.

Another feature is that the shares were seldom held for any length of time. We have given details of this in our statement of matters so will only give a few examples here.

In the years 1950 and 1951 the investments in S. S. B. Mills deferred shares were never held for longer than 7 months and 15 days, and in some for as little as 1 month, 4 months and 5 months. In one case the "investment" was bought and sold on the same day. The position in the M.D.M. Co. was exactly the same.

In the same years D.C.P.M. preference shares were held for only 3 months and 1 day; and the deferred shares for periods ranging from 13 months to 19 months 9 days.

In 1952 some Jaipur Udyog Ordinary shares were held for periods ranging from 13 months to 19 months 9 days.

In 1952 Govan Brothers Ordinary shares were held for only 6 months; and in Dalmia Jain Aviation a large investment of Rs. 8,80,000 was held for only 3 months.

All this was clearly not for the purpose of *bona fide* investment, especially as even the directors of L.E.S. Co. were not given the information about the purchase and sale of shares worth lacs of rupees till the final accounts that is, the balance sheets and the profit and loss accounts, were placed before them.

Nor can the investments be justified on the ground of yield.

L.E.S. Co. suffered a Capital loss of Rs. 32,33,750 on the shares of S.S.B. Mills Ltd. and M.D.M. Co. Ltd., but it made a capital profit of Rs. 2,54,440 on the sale of some of its investments to sister concerns.

The loss of interest to L. E. S. Co. was Rs. 84,50,048 as detailed below :—

	Rs.
Interest @ 6% on Rs. 1,86,61,550 from 21-1-47 to 31-12-56	1,11,66,253
Less: Actual income to L.E.S. Co. during 21-1-47 to 31-12-56	
by way of	
Interest	15,98,445
Dividend	11,17,760
	<hr/> 27,16,205
Net loss of Interest	<hr/> 84,50,048

We say that the investing public were interested in L. E. S. Co. through the Bharat Bank which held 50 A Class shares and 84,440 B Class shares up to 31-3-1948; also because a portion of L.E.S. Co. shares capital was held by the investing public as follows :—

1951-52	11.2%	Ex. 724
1952-53	9.8%	Ex. 701
1953-54	4.8%	Ex. 698 & 701
1954-55	3.5%	Ex. 701

These transactions form part of the pattern of R. Dalmia's scheme of using the funds of a Public Limited Company to assist them to retain control over newly acquired companies which were previously acquired from the funds originally borrowed from the banks under his control. The borrowings from the banks were cleared with the funds obtained from the Public Limited Companies.

The manner in which some of the investments were later transferred to another concerns, in which the D. J. Group were interested at a time when the investments were going to yield returns in the form of dividends is another instance of the pattern of manipulating the accounts and misusing the funds of a Public Limited Company. In this case shares of Bennett Coleman & Co. Ltd., and Jaipur Udyog Ltd. were disposed of to Edward Keventer(s) Ltd., just before the declaration of dividend.

All this was rendered possible because R. Dalmia was in effective control of L.E.S. Co. and Edward Keventer(s) Ltd. The other directors of these companies were either associates of R. Dalmia or 'Dummies' being his close relative and/or employees of the concerns under his control. These directors were not in a position to exercise any independent control nor did they do so.

The loss to L. E. S. Co. was the loss of interest on the amount invested in unremunerative shares as well as the Capital loss sustained by it. The loss up to 31-12-56 amounted to Rs. 1,14,29,358. This is not to say that L. E. S. Co. lost only Rs. 1,14,29,358 by virtue of loss of interest and in unremunerative shares. It lost a further amount of Rs. 1,29,24,000 by various and devious means adopted as detailed in Chapter II on "Misuse of Fund".

The gain to the D. J. Group was the continued use of funds through D.C.P.M., B.U.A. and A.U. Ltd., and relief of interest liability to the extent of Rs. 23,18,682.

The persons responsible were the directors of L.E.S. Co., viz., I. D. Goswamy, M. P. Modi, R. K. Jain, Shriyans Prasad Jain, Shital Prasad Jain, Sahu Ram Swaroop Jain, Virendra Singh Chordia, R. L. Chordia, R. Sharma, M. L. Sodhani, G. L. Chokhani, R. D. Agarwala, T. A. Desai, Vishnu Kumar, R. P. Gurha, D. A. Patel, L. R. Sharma, M. P. Sharma, S. B. Kontu, L. M. Pathak, S. K. Sanghi. These were 'Dummy' Directors and the person really responsible was R. Dalmia and up to 31-5-48 the members of the D. J. Group.

CHAPTER VIII

AMALGAMATION OF S.S.B. MILLS AND M.D.M. CO. (IN LIQUIDATION) UNDER SECTION 208-C OF THE INDIAN COMPANIES ACT, 1913

1. LESCO took over the assets and liabilities of S.S.B. Mills Ltd. (in liquidation) and M.D. M. Co. Ltd. (in liquidation) according to a Scheme of Arrangement under Section 208 C of the Indian Companies Act, 1913, and destroyed the books of these companies to bring an end to the liquidation proceedings early without any inquiry, in disregard of honest commercial practice with the following object :—

To obviate any possible inquiry into the affairs of S.S.B. and M.D.M. Companies controlled by the D. J. Group and taken by R. Dalmia.

2. Loss to LESCO Rs. 8,35,176 being the amount of the loss suffered in meeting the liabilities of the mill companies.

The D. J. Group acquired control of S.S.B. Mills Ltd. and M.D.M. Co. Ltd., on 19th October, 1946 and these companies were sent into voluntary liquidation on 31-12-1951.

On 3rd April, 1953 a meeting of the Board of Directors of LESCO was held to consider the proposed scheme of arrangement under Section 208-C of the Indian Companies Act, 1913 for the transfer of assets and liabilities of S.S.B. Mills and M.D.M. Company. The draft scheme was signed by the Chairman of the meeting, R. Sharma. G. L. Chokhani was appointed as an agent of LESCO and was authorised to get the scheme implemented (Ex. 505).

On 24th April, 1953 G. L. Chokhani was co-opted as a Director and was authorised to execute the agreements with the Liquidators of S.S.B. and M.D.M. Companies (Ex. 505).

On 8-5-53 the agreements were signed by G. L. Chokhani on behalf of South Asia Industries Ltd. and R. D. Joshi and D. D. Joshi on behalf of the Mill Companies as Liquidators (Ex. 505). The action of the Directors in taking over the assets and liabilities was ratified by the Shareholders of LESCO on the 25-11-1955. (Ex. 721).

According to the scheme the following assets and liabilities were taken over by South Asia Industries Limited (Exs. 701 & 714) :—

										Rs.
(a) Sir Shapurji Broacha Mills Ltd.										
Assets	—	—	—	—	—	—	—	—	—	23,46,254
Less Liabilities	..	..	..	..	..	..	..	..	..	1,89,976
										21,56,278
Less Liabilities to the Shareholders under the Scheme								..	..	17,16,880
Excess of assets over liabilities transferred to Capital Reserve									..	4,39,398

(b) *Madhowji Dharamsi Manufacturing Co. Ltd.*

	Rs.
Assets	11,02,738
Less Liabilities	1,99,536
	<hr/> 903,202
Less Liabilities to the Shareholders under the Scheme	12,03,320
Excess of Liabilities over assets transferred to capital loss	<hr/> 3,00,118

(c) *Capital Loss Account*

Difference between liabilities and assets of M.D.M. Co. Ltd. ..	3,00,118
Add expenses incurred for court and others	9,110
	<hr/> 3,09,228
Less amount recovered from the liquidator of S.S.B. Mills	1,36,480
Amount transferred to Capital Reserve	<hr/> 1,72,748

(d) *Capital Reserve Account*

Difference between liabilities and assets of S.S.B. Mills Ltd. ..	4,39,398
Less amount expenses incurred	13,329
Amount transferred from Capital Loss account	1,72,748
	<hr/> 1,86,077
Balance transferred to P & L Account	<hr/> 2,53,321

A capital profit of Rs. 2,53,321 was shown as transferred to the Profit and Loss Account for the year ended 31-3-54 (Ex. 701).

During 1953-54 the books of accounts of South Asia Industries Ltd., show as realisation Rs. 10,21,658 from the assets and payment of Rs. 29,86,090 for the liabilities to shareholders and others. (Ex. 714).

Out of Rs. 29,86,090 the Shareholders were paid to the extent of Rs. 28,87,761. Out of the Rs. 28,87,761, Rs. 33,671 was paid in cash and the balance of Rs. 28,54,090 was paid by Hundies as under to the R. Dalmia concerns (Ex. 701) :—

	Rs.
(1) Asia Udyog Ltd.	20,73,954
(2) LESCO	5,22,000
(3) D.D.C. Ltd.	54,000
(4) M.D.M. Co Ltd.	1,36,480
(5) B.U.A. Ltd.	7,656
	<hr/> 28,54,090

During 1954-55 LESCO realised only Rs. 500 but it has paid Rs. 17,240 to the shareholders and others (Ex. 711).

In addition to the assets and liabilities taken over as stated earlier, South Asia Industries had to pay the Income-tax liabilities of the Mills and realised the E.P.T. refund of the two mill companies which were unrecorded in their books (Ex. 697) :—

	Rs.
Income-tax liabilities	29,62,952
Post-war refunds of E.P.T.	18,75,282
	<hr/> 10,87,670

Thus South Asia Industries was made to take the additional net liabilities of Rs. 10,87,670 in respect of these two mill companies. The net loss suffered by South Asia Industries Ltd., in respect of taking over the assets and liabilities was Rs. 8,34,349 (Rs. 10,87,670 less Rs. 2,53,321 as stated above). This loss was further increased by Rs. 827 in respect of non-realisation of assets bringing the total loss to Rs. 8,35,176.

Out of the total assets of Rs. 34,48,992 taken over by South Asia Industries, assets of the value of Rs. 3,33,975 were unrealised as on 31-3-56.

Persons responsible:

The Directors during the relevant period were R. Sharma, M. L. Sodhani, R. L. Chordia and G. L. Chokhani. R. Sharma is dead.

M. L. Sodhani has not filed any reply to the allegations against him in the Statement of Matters. R. L. Chordia and G. L. Chokhani have raised a number of legal objections in their Written Statements but have not replied on the merits. These persons were subservient to R. Dalmia and were "Dummies" and were not in a position to act independently. The person really responsible was R. Dalmia.

CHAPTER IX

TAKING OVER OF DISPUTED CLAIM OF ALLENBERRY

In December, 1957, South Asia Industries Private Ltd., was fraudulently made to take over from D.D.C. Ltd., for Rs. 21,50,000 the disputed claim of Allenberry against the Union of India.

The object was to cover up the fraud committed on D.D.C. by R. Dalmia in giving, from the funds of D.D.C. a loan of Rs. 18 lakhs to Allenberry and releasing Allenberry from its obligation by passing on its disputed claim to the Union of India. This was done after the appointment of Inspectors by the Central Government under Section 237 of the Companies Act, 1956 on 6th July, 1957.

South Asia Industries Private Ltd., was under the effective control of R. Dalmia in 1957. The minutes of the Board of Directors purport to show that on 13th November, 1957 S. B. Kontu, D. A. Patel and S. K. Sanghi considered the terms and conditions of the draft agreement between Dalmia Dadri Cement Ltd., and South Asia Industries Ltd., in respect of taking over of the benefits and fruits, including all rights and interest arising out of the agreement dated 23rd March, 1954 between D.D.C. Ltd. and Allenberry & Co. Private Ltd., in consideration of the amount of Rs. 21,50,000 as part payment towards the amount then due to South Asia Industries by D.D.C. (Ex. 859). S. K. Sanghi, Director, was authorised to execute the agreement on behalf of South Asia Industries Ltd. (Exs. 859 & 1,056). The Directors' action was ratified by the Shareholders in their Extra-ordinary General Meeting held on 11-12-1957 (Ex. 861). Entries were passed as on 31-12-1957 in the Books of South Asia Industries, debiting "Claims Receivable" and crediting D.D.C.'s Current Account. D.D.C.'s liability to South Asia Industries thus came down to Rs. 9,19,931 from 30,69,931 (Ex. 736). In the very first Balance Sheet of South Asia Industries Private Ltd., as at 31st March, 1958 (Ex. 640) i.e., within three months of the passing of the above entry, this amount was shown as "Claim Receivable" (Considered doubtful) under the head "Loans & Advances". In the Balance Sheet as at 31-3-59 (Ex. 641) this amount was described in the same way.

Persons Responsible :—

(A) R. Dalmia;

(B) The then Directors of South Asia Industries namely:—

S. B. Kontu

S. K. Sanghi and

D. A. Patel.

They have not given any explanation in respect of these transactions except D. A. Patel who submitted in his reply as under :—

“.....I did not take any part in the discussion nor I voted on the resolution passed by the board approving the draft agreement embodying the terms and conditions of taking over of the said claim. I further say that I did not attend the shareholders' meeting held on 11-12-1957 at which the relevant resolution was passed.”

S. K. Sanghi has not filed any reply. S. B. Kontu has raised a number of legal objections in his written statement. These directors were subservient to R. Dalmia and were not in a position to exercise independent control. In the circumstances R. Dalmia must be held mainly responsible for this transaction.

CHAPTER X

BREACHES OF TRUST

We have been asked in our terms of reference to pick out, among other things, breaches of trust that occurred in the administration of the scheduled companies. In our opinion the following from among the frauds that we have listed above would also be breaches of trust because they constitute a breach of the fiduciary obligations of the then directors of L.E.S. Co. to the shareholders of the company.

Directors are enjoined by the law to act in the interests of the company of which they are directors. In this case the directors acted against the interests of L.E.S. Co. at the dictates of R. Dalmia in the following instances :

- (a) When the funds of L.E.S. Co. ranging from Rs. 79,92,000 to Rs. 1,87,20,916 were fraudulently invested in the shares of other Dalmia concerns;
- (b) Where loans were fraudulently granted as under :
 - (1) to D.C.P.M. ranging from Rs. 44,10,260 to Rs. 1,61,01,198;
 - (2) to Asia Udyog Rs. 1,25,00,000; and
 - (3) to Patiala Biscuits Rs. 13,37,735;
- (c) Amalgamation of S.S.B. Mills Ltd. (in liquidation) and M.D.M Co. Ltd. (in liquidation) under section 208C of the Indian Companies Act, 1913 and consequential loss to L.E.S. Co. of Rs. 8,35,176;
- (d) Loss of Rs. 21,50,000 due to taking over the disputed claim of Allenberry;
- (e) Manipulated losses of Rs. 68,76,000 on the sale of investments.



VOLUME VII
PART 2
DALMIA DADRI CEMENT LTD.



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CHAPTER I

INTRODUCTORY

Dalmia Dadri Cement Ltd.

Dalmia Dadri Cement Ltd. is not one of the Scheduled Companies. It was added by us under Clause 1 (2) of the Notification. The conditions on which a company may be added under Clause 1(2) are circumscribed and the question arose whether we are tied down in the investigation of those matters alone or whether once the conditions are satisfied and the company added, the whole matter is opened up so that we deal with the company in the same way as a Scheduled Company. That was considered by us on 14-11-1958 and after hearing Counsel we decided, for the reasons recorded in our Order of that date, that once a company is added, the full scope of the inquiry is attracted and the Company has to be dealt with thereafter in the same way as the Scheduled Companies. This order was challenged in the Punjab High Court by a Writ application; but the application was dismissed on 22-12-1958. Accordingly our Order in that behalf has become final for the purpose of this inquiry. That being so, we will now proceed to examine the affairs of Dalmia Dadri Cement Ltd. in the same way as we have done in the cases of the Scheduled Companies.



CHAPTER II

PROMOTION AND CONTROL

Dalmia Dadri Cement Ltd. (hereafter described) as D.D.C. was incorporated as a public limited company on 26-5-1938 in Jind State under the then Jind State Companies Act, 1922. The facts leading to the floatation of the company are these.

Prabhu Dayal Agarwal who was a resident in Jind State had found large deposits of lime-stone and Kankar near Charkhi Dadri of the erstwhile Jind State. Subsequently he gave information about these deposits to Shanti Prasad Jain. Thereafter Shanti Prasad Jain approached the Government of Jind State for a licence to establish a cement factory. An agreement was executed on 1st April, 1938 between the Jind State and Shanti Prasad Jain under which the latter was granted rights and privileges to establish a cement factory at or near Charkhi Dadri.

The Memorandum and Articles of Association (Ex. 868) filed with the Registrar of Companies, Jind State, were signed on 4th May, 1938, by the following persons. The number of shares subscribed are shown against their names.

(1) M. K. Roy	..	..	..	..	..	..	100 Ordy. shares
(2) Hari Dutta	...	..	...	..	..	..	100 Ordy. shares
(3) J. K. Sharoff	..	..	..	..	..	..	100 Ordy. shares
(4) J. Dalmia	..	..	..	..	..	..	500 Ordy. shares
(5) Shanti Prasad Jain	..	..	..	..	..	..	500 Ordy. shares
(6) Mahabir Pd. Modi	...	..	..	..	..	..	500 Ordy. shares
(7) Vasudeo Agarwal	...	..	..	..	..	..	500 Ordy. shares
(8) Jagat Pd. Jain	..	..	..	..	..	..	500 Ordy. shares
(9) Prabhu Dayal Agarwal	..	..	..	..	..	..	500 Ordy. shares

The authorised capital of D.D.C. was Rs. 50 lakhs, made up of

	Rs.
20,000 6% cum Pref. shares of Rs. 100 each	20,00,000
2,50,000 Ordy. shares of Rs. 10 each..	25,00,000
5,00,000 Defd. shares of Re. 1 each ..	5,00,000
	50,00,000

Except Prabhu Dayal Agarwal, Shanti Prasad Jain and J. Dalmia, the remaining persons who signed the Memorandum and Articles of Association were employees in the companies under the control of Dalmia Jain Group. These persons were not in a position to float the Company. M. P. Modi is a sister's son of R. Dalmia and J. Dalmia.

H. D. Bishnoi in his reply has admitted that he was one of the signatories to the Memorandum and Articles of Association and that he was a registered shareholder. He did not have any beneficial interest in the shares as he was a nominee, and benami shareholder of the Companies or firms under the control of the D. J. Group. He signed the Memorandum of Association as far as he remembers at the instance of a member of Dalmia Jain Group.

Shanti Prasad Jain and J. Dalmia have not disputed the allegations that the real promoters were members of the D.J. Group. They admit that D.D.C. was a Dalmia Jain concern. What they say is that D.D.C. ceased to be a D. J. Group Company after 31st May, 1948. It is quite clear that the real promoters of this Company were members of the D. J. Group.

The firm known as Dalmia Jain & Co. was appointed Managing Agents of the company *vide* agreement dated 29-1-1940 (Ex. 1057) for a period of 20 years with effect from 26-5-1938 on the terms and conditions embodied therein. The agreement was signed by J. Dalmia on behalf of Dalmia Jain & Co. and Prabhu Dayal Agarwal and J. P. Jain, Directors on behalf of D.D.C.

On 10-5-1941, Dalmia Jain & Co. (Jind State) Ltd. was incorporated in the Jind State and this company (*vide* agreement dated 12-9-1941) was appointed Managing Agents of D.D.C. in place of Dalmia Jain & Co. for the remaining period (Ex. 1058).

The agreement was signed by Shanti Prasad Jain on behalf of Dalmia Jain & Co. (Jind State) Ltd. and by M. P. Modi and Prabhu Dayal Agarwal, Directors of D.D.C.

All the shares of Dalmia Jain & Co. Ltd. (Jind State) were held by members of the D. J. Group and their nominees at all relevant times. On 5th September, 1952, R. Dalmia held 4,900 shares out of 5,000 ordinary shares and the balance of 100 shares were held by Govan Bros. Ltd.

R. Dalmia and his wife Smt. Saraswati Devi held 9,900 Ordinary shares out of 10,000 Ordinary shares and all the 30,000 Preference shares in Govan Bros. Ltd. in 1951-52.

The Directors of Dalmia Jain & Co. (Jind State) between 19-8-1948 and 30-3-1950 were—

- (1) J. Dalmia
- (2) V. H. Dalmia

Between 30th March 1950 and 30-9-1952—

- (1) V. S. Chordia (brother-in-law of R. Dalmia)
- 30th September, 1952 onwards—
- R. Dalmia

The first Directors of the Company were—

- (1) J. Dalmia
- (2) Shanti Prasad Jain
- (3) Mahabir Prasad Modi
- (4) Vasudeo Agarwal
- (5) Jagat Prakash Jain
- (6) Prabhu Dayal Agarwal.

The qualification of a Director under the old Articles of the Company before amendment was that he had to hold shares of the face value of Rs. 5,000 in his own name. The Articles were amended on 19th September, 1956 whereby the limit of holding shares was brought down to Rs. 1,000. It would appear that the shares held in the names of Directors were bought by members of the D. J. Group.

J. M. Gupta in his written statement says

"The qualifying shares were bought by the D. J. Group in my name with their own capital. I was an employee of Indian National Airways Ltd. and was included in the Board of Directors by the D. J. Group, I had no personal stake in D.D.C. Ltd. and the decisions taken from time to time were the decision of the D.J. Group, especially Shri R. K. Dalmia, for which I assume no responsibility."

Between 1st January, 1948 and December, 1956 the following persons acted as directors of D.D.C.

							Date of appointment	Date of cessation
(1)	M. L. Raizada	..	..	..	..	..	4-12-47	21-1-52
(2)	N. C. Roy	..	..	..	..	..	1946	26-5-50
(3)	J. Dalmia	..	..	..	..	..	Date of incorporation	16-3-50
(4)	M. P. Modi	..	..	..	..	..		7-11-48
(5)	Shital Pd. (Ex. officio)	..	..	..	..	..	21-11-48	23-5-50
(6)	V. S. Chordia	..	..	..	..	..	25-5-50	29-12-52
	(Ex. Officio)	..	..	..	..	..	23-5-50	3-12-52
(7)	H. M. Gupta	..	..	..	..	..	21-1-52	29-12-52
(8)	R. Dalmia	..	..	..	..	..	3-9-52	3-11-52
(9)	S. K. Sanghi	..	..	..	..	..	3-9-52	17-6-53
(10)	S. N. Dudani	..	..	..	..	..	3-11-52	3-5-58
(11)	R P. Gurha	..	..	..	..	..	5-11-52	3-5-58
(12)	D. A. Patel	..	..	..	..	..	12-6-53	18-11-53
(13)	Raghunath Das Dalmia	..	..	..	..	..	24-7-53	27-5-54
(14)	M. P. Sharma	..	..	..	..	..	21-5-54	30-3-56

Share-holdings of D.D.C. Ltd.

The control was also exercised through the share-holdings.

The paid-up capital of D.D.C. Limited consisted of :—

(Ex. 868).

							Rs.
(a)	9,544	6%	Cumulative Preference shares of Rs. 100/- each	..	..	..	9,54,400
(b)	1,20,255	Ordinary shares of Rs. 10/- each	..	..	..	..	12,02,550
(c)	2,50,000	Defence shares of Re. 1/- each	..	..	..	..	2,50,000
							<u>24,06,950</u>

The voting rights attached to the shares were as follows :—

(a) *Cumulative Preference Shareholders* have the right to vote at the General Meetings, only when the dividend of the Preference shares is in arrears for twelve calendar months or when any resolution is proposed for reducing the capital of the company or winding up the company or directly affecting the interest of holders of such shares as a class as regards dividend return of capital or voting upon any question which entitles the holders of Cumulative Preference Shares to vote. Each preference share confers one vote to its holder.

(b) Each ordinary share and deferred share conferred one vote to its holders whenever a poll was demanded.

(c) The shares of D.D.C. Ltd. held by R. Dalmia, including the shares held by the companies under his control and the shares held by his relatives, employees and associates and the shares held by others, are set out in the table below.

DALMIA DADRI CEMENT LIMITED

Statement Showing the share-holding position for the years 1951—1956

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Years	D. J. GROUP				OTHERS							
	Pref.	% to the Total No. of shares	Ordry.	% to the Total No. of shares	Defd.	% to the Total No. of shares	Pref.	% to the Total No. of shares	Ordry.	% to the Total No. of shares	Defd.	% to the Total No. of shares
Upto 31-12-51	5,805	60.8%	73,188	60.6%	1,45,420	58.1%	739	39.2%	47,067	39.4%	1,04,580	41.9%
29-12-1952	6,476	68%	81,580	68%	1,62,200	68%	3,068	32%	38,675	32%	87,800	38%
1-4-1954	6,476	68%	81,580	68%	1,62,200	65%	3,068	32%	38,675	32%	87,800	35%
1-4-1955	7,817	82%	89,692	75%	1,82,725	73%	1,727	18%	30,563	25%	67,275	27%
1-4-1956	7,817	82%	89,712	75%	1,82,725	73%	1,727	18%	30,543	25%	67,275	23%
29-9-1956	9,528	99.84%	1,20,050	99.83%	2,49,000	99.60%	16	.16%	205	.17%	1,000	.40%

(5) On the basis of voting rights R. Dalmia was in a position to decide any issue at a poll in the manner desired by him at the shareholders' meetings, as will be seen from the figures given below :—

				When Pref. Shareholders are entitled to vote. Total No. of votes 3,79,799		When Pref. Shareholders are NOT TO VOTE Total No. of votes 3,70,255	
				R. Dalmia etc.	Others	R. Dalmia etc.	Others
Up to							
31-12-1951	..	..	..	2,24,413	1,55,386	2,18,608	1,51,647
As on							
29-12-1952	..	..	..	2,50,256	1,29,543	2,43,780	1,26,475
1-4-1954	..	..	..	2,50,256	1,29,543	2,43,780	1,26,475
1-4-1955	..	..	..	2,80,234	99,565	2,72,417	97,838
1-4-1956	..	..	..	2,80,254	99,545	2,72,437	97,818
29-9-1956	..	..	..	3,78,578	1,221	2,69,050	1,205

We thus find that at the inception the D. J. Group was in control. But there is no evidence to connect J. Dalmia and Shanti Prasad Jain with any of the instances to which exception was taken in the statements of matters and there is nothing else to show that they were associated with the affairs of the Company at the times with which we are concerned. They had ceased to be directors by then, so, whether or not the D. J. Group was still in existence as a group on those dates we do not think it would be proper to associate these two persons with the affairs of this company at the times that are relevant for the purposes of our inquiry. But there is ample material to indicate that R. Dalmia was in effective control at all material times. So we will call this company an R. Dalmia concern.

CHAPTER III

FRAUD LOAN OF RS. 18 LACS TO ALLENBERRY

We will deal with the fraud that was perpetrated. It relates to a loan of Rs. 18 lacs to Allenberry.

In or about April, 1953 Dalmia Dadri Cement Limited fraudulently gave an unsecured loan of Rs. 18 lacs to Allenberry & Co. Ltd., a private company in which R. Dalmia was mainly interested.

Describing the sum of Rs. 18 lacs in the Balance Sheets of D.D.C Limited as at 31st December, 1953, 1954, 1955 and 1956 as 'Deposits' and 'Claims Receivable considered good instead' of 'Loans' and 'Disputed Claims' was deceptive, and fraudulent inasmuch as,

The objects were:—

- (a) To help and assist Allenberry & Co. Ltd.
- (b) Eventually to help and assist R. Dalmia.

Detriment to D.D.C. Ltd.

This is another instance of the pattern followed by R. Dalmia of making a company in which the public were interested advance moneys without any security to a private company in which R. Dalmia was solely interested, for the benefit of that private company and himself and to the detriment of the company in which the investing public were interested.

The manner in which the loan was sought to be repaid was also an example of the pattern whereby the repayment was never intended to take place in the form in which it was given viz., cash but by giving assets of no value: (in this case a disputed claim of Allenberry against the Union of India which resulted in a liability of Rs. 35 lakhs on D.D.C Limited).

The loss of interest to D.D.C. Ltd., was Rs. 5,41,600.

The Advantage to Allenberry : Was use of Rs. 18,00,000 as an unsecured loan.

The Advantage to R. Dalmia : Was (a) use of Rs. 18,00,000 of a Public Limited Company through his private limited company, Allenberry & Co. Ltd. free of interest from 23-2-54 to 27-12-57. (b) Saving of interest amounting to Rs. 5,41,600.

The particulars of these are as follows:—

- (i) Allenberry & Co. Ltd., was under the effective control of the D. J. Group from 1945 onwards and of the 1949 of R. Dalmia.
- (ii) R. Dalmia was the principal beneficiary of Allenberry & Co. Ltd., at that time.
- (iii) Allenberry's paid-up capital was Rs. 19,00,000. It had no reserves and had not declared dividends from 1948 to 1952.

- (iv) On 9th April, 1953, Allenberry asked Dalmia Fadri Cement Ltd., for a loan of Rs. 20 lakhs for 9 months @ 6%. (Ex. 1059/Vol. II/19).
- (v) The request was considered by S. N. Dudani, R. P. Gurha and S. K. Sanghi, Directors of Dalmia Dadri Cement Ltd. at its Board of Director's meeting held on 17th April, 1953, and the loan of Rs. 18 lacs with interest @ 8% repayable in six months was sanctioned to Allenberry.
(Ex. 1059/Vol. II/P. 19).
- (vi) No security was asked for the loan and at no time did they have any intention of recovering the loan in cash.
- (vii) Both S. N. Dudani and R. P. Gurha, Directors of D.D.C. Ltd. were closely connected with Allenberry as its officers, viz., as Assistant Secretary and Accountant respectively.
- (viii) The Directors of D.D.C. Ltd., made no inquiry about the financial position of Allenberry before sanctioning the loan (Ex. 441/P. 48-49).
- (ix) Later on, at the request of Allenberry, the Directors of Dalmia Dadri Cement Ltd. granted an extension of two months in the first instance and a further extension up to 31st January, 1954 to repay the loan. (Ex. 1059/Vol. II/P. 31).
- (x) Even at the later stages the Directors of Dalmia Dadri Cement Ltd. did not ask for any security from Allenberry.
- (xi) On 15th January, 1954, R. P. Gurha, Raghunathdas Dalmia and S.N. Dudani, Directors, decided to take legal action against Allenberry if it failed to repay the amount on or before 31-1-1954.
- (xii) Allenberry defaulted as planned.
- (xiii) On or about 26th February, 1954, a suit was filed in the Calcutta High Court for the recovery of the Rs. 18,00,000 and interest thereon amounting to Rs. 1,19,145-3-3 for the period from 1-5-1953 to 26-2-1954 (Ex. 441/P. 158).
- (xiv) Twenty-five days after the filing of the suit both D.D.C. Ltd. and Allenberry settled the matter mutually. The terms of settlement are contained in the Agreement dated 23rd March, 1954, executed between D.D.C. and Allenberry.
(Ex. 441/P. 51).
- (xv) On 26th March, 1954, the terms of settlement were filed in the High Court at Calcutta.
(Ex. 441/P. 160—164).

The terms were:—

- “1. The Defendant Company hereby admits and acknowledges that a sum of Rs. 19,19,145-3-3 (Rupees nineteen lacs nineteen thousand one hundred and forty-five annas three and pies three only) were due and owing from the defendant company to the Plaintiff company at the date of the institution of the suit.

2. The defendant company has entered into an agreement dated the 23rd March, 1954, in favour of the plaintiff company in respect of the claims of the defendant company against the Government of India under contracts Nos. 160 of 11th July, 1946, 161 of 11th July, 1946, 197 of 2nd August, 1946 and 311 of 11th September, 1946. The plaintiff company has accepted the said agreement in satisfaction of the sum of Rupees Eighteen lacs being the principal amount advanced by the plaintiff company to the defendant company.
3. There would be a decree in favour of the plaintiff company against the defendant company for Rs. 1,19,145-3-3 (Rupees one lac nineteen thousand one hundred and forty-five, annas three and pias three) with interest at 5% per annum from the date of the suit until realisation.
4. The defendant company shall also pay to the plaintiff company a sum of Rupees one thousand and five hundred as the settled costs of this suit."

(xvi) On 24th November, 1954, the Calcutta High Court gave a consent decree for Rs. 1,19,145-3-3 with interest @ 5% per annum from the date of the judgment till the date of realisation and also for Rs. 1,500 towards the settled costs.

(xvii) On 12th August, 1949, the Union Government had made a counter claim for a large amount arising out of the aforesaid contracts. In spite of this the directors of D.D.C. Ltd. took over the claim of Allenberry in satisfaction of Rs. 18,00,000 due from Allenberry & Co. Ltd. (Ex. 441/P. 51-52).

(xviii) Both the claims of Allenberry and the counter claim of the Union of India were the subject-matter of Arbitration proceedings.

(xix) Under the Agreement D.D.C. was to pay Rs. 50,000 to Allenberry towards the legal charges in the first instance and further payments were to be made from time to time. Allenberry did not have liquid funds to pay of even the legal charges.

(xx) A disputed and doubtful claim of Allenberry against the Union of India was thus substituted for Rs. 18 lacs advanced to Allenberry in cash.

(xxi) In D.D.C. Ltd. the investing public was substantially interested whereas in Allenberry only R. Dalmia was interested.

(xxii) In the Balance Sheets of D.D.C. Ltd. (Ex. 868) the Advance of Rs. 18 lacs to Allenberry was shown as follows:—

		Rs.
As on 31-12-53 Deposits (with Joint Stock Companies)	..	30,00,000
31-12-1954		
Claims Receivable under Agreement considered good	.. ..	18,30,617 10 0
31-12-1955		
Claims Receivable considered good	.. ..	19,34,839 1 6
31-12-1956		
Claims Receivable (Unsecured decreed)	.. ..	20,25,222 10 3

- (xxiii) The above presentation in the Balance Sheets was fraudulent because:
- (a) A loan cannot be described as a Deposit.
 - (b) The disputed claim of Allenberry cannot be classified as 'Good'.
 - (c) The fact that a counter claim was made by the Union of India against Allenberry was suppressed.
 - (d) The fact that the claim of Allenberry and the counter claim of the Union Government were the subject-matter of Arbitration was not disclosed to the shareholders of D.D.C.
- (xxiv) D.D.C. Ltd. incurred legal expenses to the extent of Rs. 1,00,000 in the Arbitration alone.
- (xxv) On 6th July, 1957, the Government of India ordered an investigation into the affairs of D.D.C. Ltd. under section 237 (b) of the Companies' Act, 1956 (Ex. 441/P. 145-146).
- (xxvi) Pursuant to an agreement dated 27th December, 1957, D.D.C. Ltd. transferred this claim to another R. Dalmia concern, South Asia Industries Ltd. for a consideration of Rs. 21,50,000 (Ex.1056).
- (xxvii) It took a litigation, two agreements, and $4\frac{1}{2}$ years to recover a loan of Rs. 18,00,000 from Allenberry that was to have been repaid with interest within 6 months.
- (xxviii) If the resources of the company needed conservation for future expansion, it was the primary duty of the directors to have invested the funds of D.D.C. in guilt-edged securities or in easily realisable assets.
- (xxix) On 22nd March, 1958, the umpire gives, an award against Allenberry and in favour of the Union of India to the extent of Rs. 35,00,000 (Ex. 441/P. 52).
- (xxx) D.D.C. Ltd. lost about Rs. 5,41,600 by way of interest on Rs. 18 lacs from 23-2-1954 to 27-12-1957 @ 5%.

Persons responsible :

When the loan to Allenberry was given, the directors of the Company were:—

- (1) S. K. Sanghi;
- (2) S. N. Dudani; and
- (3) R. P. Gurha.

They have not controverted the allegations in the Statement of Matters. Neither these persons nor the Company in their written statements have justified the grant of the loan. They have merely raised numerous legal objections regarding the constitution and powers of the Commission.

These directors were also responsible for the deceptive description of the sum of Rs. 18 lacs in the Balance Sheets of D.D.C. Ltd., as on 31-12-1953, 1954, 1955 and 1956 (Ex. No. 868).

CHAPTER IV

LOANS OF Rs. 12 LACS TO JAIPUR UDYOG AND Rs. 25 LACS TO RAJASTHAN UDYOG

Dalmia Dadri Cement Ltd. granted loans to the following companies in disregard of honest commercial practice:—

- (a) Loan of Rs. 12,00,000 to Jaipur Udyog Ltd. a private company under the control of R. Dalmia on 14th December, 1953 This was also in contravention of Section 86-D of the Indian Companies Act, 1913.
- (b) Loan of Rs. 25,00,000 to Rajasthan Udyog Ltd., a private limited company under the control of R. Dalmia on 19th November, 1954.

These sums were described in the Balance Sheet of D.D.C. Ltd. (Ex. 868) as at 31st December, 1953 and 1954 as 'Deposits' instead of Loans. This was in disregard of honest commercial practice.

The object was

To help and assist R. Dalmia and his concerns.

Detriment to Dalmia Dadri Cement Ltd.

This is another instance of the pattern followed by R. Dalmia of making a company in which the public are interested to advance moneys without any security to a private company in which he was solely interested for the benefit of that private company and himself and to the detriment of the company in which the investing public are interested.

The manner in which the loan of Rs. 25,00,000 to Rajasthan Udyog was sought to be repaid is another instance of the pattern whereby the repayment was never intended to take place in the form in which it was given, namely, cash, but by transferring assets such as shares of sister companies which remained with the lending company for a short duration, in this case only two months.

The gain to R. Dalmia was the use of the funds of public companies to the extent of Rs. 12,00,000 and 25,00,000 at the respective times.

Particulars re : Jaipur Udyog Ltd.

- (i) Jaipur Udyog Ltd., was a Private Limited Company under the control of R. Dalmia.
- (ii) In December 1953, V.S. Chordia, M. L. Sodhani, P. K. Roy, D. A. Patel and S. N. Dudani were its Directors.
- (iii) S. N. Dudani was a common Director, viz., Director of Jaipur Udyog Ltd., and Dalmia Dadri Cement Ltd.
- (iv) On 14th December, 1953, S. N. Dudani, R. P. Gurha and Raghunath Das Dalmia decided to 'Deposit' Rs. 12,00,000 for 3 months with Jaipur Udyog Ltd., carrying interest @ 4% (Ex. 1059/Vol. II/P.29).

- (v) The amount of Rs. 12,00,000 was paid to Jaipur Udyog Ltd. by drawing a hundi in favour of Jaipur Udyog Ltd. on Govan Brothers Ltd. on 30th December, 1953. By this process the account of Govan Brothers, which was showing a debit balance of Rs. 12,00,000 in respect of the sale of 1,20,000 Ordinary Shares of D. J. Aviation sold to it by D.D.C. Ltd. on 30-11-1953, was shown as fully adjusted. (Ex. 1060/Vol. IX/P 160 and Ex. 1061/P. 16).
- (vi) The 'Deposit' was in fact a loan to Jaipur Udyog Ltd.
- (vii) The loan was unsecured.
- (viii) In the Balance Sheet of D.D.C. Ltd. as at 31-12-1953 (Ex. 868) the loan was described as under:—

'Deposits' (with Joint Stock Companies)	Rs. 30,00,000
---	---------------

NOTE

The amount of Rs. 30,00,000 includes loans to Allenberry	18,00,000
Loan to Jaipur Udyog Ltd.	12 00,000
	30,00,000

- (ix) On 31-3-1954, the loan was shown as repaid with interest (Ex. 1060/Vol. X/P. 37 & 1061/P. 14). The amount of Rs. 12,13,500 was debited to the account of Asia Udyog Ltd. and the Deposit account was credited in the books of D.D.C. Ltd.

Particulars re : loan to Rajasthan Udyog Ltd.

- (i) Rajasthan Udyog Ltd. was incorporated as a private company on 24th September, 1954.
- (ii) Its Directors were:—
- (a) R. Dalmia—from the date of incorporation till 31-3-1956.
 - (b) M. L. Sodhani—from the date of incorporation onwards.
- (iii) Its paid-up capital was Rs. 10,00,000 made-up of 1,00,000 ordinary shares of Rs. 10 each.
- (iv) It was under the control of R. Dalmia.
- (v) On 19-11-1954, R. P. Gurha, S. N. Dudani and M. P. Sharma, Directors of Dalmia Dadri Cement Ltd., decided to advance Rs. 25,00,000 to Rajsthan Udyog Ltd., for a period of six months carrying interest @4%.
- (vi) At that time the investing public had an interest and stake in Dalmia Dadri Cement Ltd.
- (vii) On 30th November, 1954, the amount of Rs. 25,00,000 was shown as paid to Rajasthan Udyog Ltd. and the amount was credited to the account of Asia Udyog Ltd. in the books of D.D.C. Ltd. Asia Udyog Ltd. at that time were acting as the selling agents of D.D.C. Ltd., and a large sum was due from Asia Udyog Ltd. for cement sales.
- (viii) The loan of Rs. 25 lacs was unsecured.
- (ix) The financial position of Rajasthan Udyog Ltd. did not warrant the grant of such a large loan.

- (x) In the Balance Sheets of D.D.C. Ltd. as on 31-12-1954 the loan was described as under:—

“Deposits (with Joint Stock Companies) (since realised)
Rs. 25,00,000.”

- (xi) On 30-6-1955, the loan was shown as repaid pursuant to a hundi drawn by Dalmia Dadri Cement Ltd., on Rajasthan Udyog Ltd., in favour of South Asia Industries Ltd. towards the purchase of 2,50,000 ordinary shares of Rs. 10 each of Jaipur Udyog Ltd. (Ex. 872/Vol. I/258. Ex. 873/Vol. I/201).
- (xii) The Hundi was not encashed and in the books of D.D.C. Ltd. The Investment Account was debited and the deposit account was credited. Thus the amount of Rs. 25,00,000 due from Rajasthan Udyog Ltd., was substituted by investments in the shares of Jaipur Udyog Ltd.
- (xiii) After two months *i.e.* on 31-8-1955, these 2,50,000 ordinary shares of Jaipur Udyog Ltd. were transferred to Asia Udyog Ltd. not for cash but the amount was debited to the account of Asia Udyog Ltd.

Persons responsible—The Directors

When the loans of Rs. 12 lakhs to Jaipur Udyog Ltd. and Rs. 25 lakhs to Rajasthan Udyog Ltd. were granted on 14-12-1953 and 19-11-1954 respectively, the directors were—

- (a) S. N. Dudani;
- (b) R. P. Gurha; and
- (c) Raghunath Das Dalmia.

M. P. Sharma was a director when the loan of Rs. 25 lakhs was granted to Rajasthan Udyog Ltd.

The grant of loans has not been justified by S. N. Dudani and R. P. Gurha and the Company in their written statements. Raghunath Das Dalmia in his reply says that a sum of Rs. 12 lacs was given in deposit to Jaipur Udyog for 3 months. The amount was repaid with interest and D.D.C. did not sustain any loss. He further says that he had voted for the transactions in good faith and had committed no wrong. His plea that the amount in question was given in deposit to Jaipur Udyog Ltd. and not as loan cannot be accepted. He has not given any explanation in regard to the second loan to Rajasthan Udyog Ltd.



CHAPTER V

RUPEES SIX LACS COMPENSATION PAID TO DALMIA JAIN (JIND STATE) LIMITED

D. D. C. Ltd. paid Rs. 6 lakhs to Dalmia Jain (Jind State) Ltd. by way of compensation for the termination of its Managing Agency. This was in disregard of honest commercial practice for among other reasons the following:—

- (a) Dalmia Jain (Jind State) Ltd., was paid Rs. 6,00,000 intending that the same should be received by them free of tax and without their rendering any services to D. D. C. Ltd., in which the investing public was interested.
- (b) The managing agency was terminated, not for the benefit of the managed company in which the investing public was interested, but for the benefit of R. Dalmia in pursuance of the pattern followed by him at that time to terminate managing agencies for the purposes of obtaining funds for his own purposes and concerns from public companies.

The objects were :—

- (a) to enable Dalmia Jain (Jind State) Ltd., to acquire Rs. 6 lacs as compensation free of tax;
- (b) ultimately to benefit R. Dalmia at the expense of the shareholders of D. D. C. Ltd.

R. Dalmia gained Rs. 6 lacs free of tax by this means through Dalmia Jain (Jind State) Ltd.

The particulars are as follows,

- (1) Dalmia Dadri Cement Ltd. appointed Dalmia Jain & Co. (Jind State) Ltd., as Managing Agents under an agreement dated 12-9-1941 (Ex. 1058).

- (2) The terms of appointment were :—

(a) Duration ..	1-7-1941 to 27-5-1958
(b) Remuneration ..	(i) Commission on net profit @ 10 % (ii) Office Allowance Rs. 1,000/- p.m.

- (3) The signatories to the above agreement were :

On behalf of D. D. C. Ltd.	M. P. Modi
On behalf of Dalmia Jain	P. D. Aggarwal
(Jind State) Ltd.	Shanti Prasad Jain.

- (4) Dalmia Jain (Jind State) Ltd., was incorporated on 10th May, 1941, in the erstwhile Jind State.

- (5) Its paid-up capital was Rs. 50,000 made up of 50,000 Ordry. shares of Rs. 10 each.

- (7) On 5th September, 1952, R. Dalmia held 4,900 shares out of 5,000 ordinary shares of D. J. (Jind State) Ltd. The balance of 100 shares was held by Govan Brothers Ltd.
- (8) R. Dalmia and his wife Saraswati Devi held in their own names 9,900 Ordinary shares out of 10,000 Ordinary shares and all the 3,000 Pref. shares of Govan Brothers Ltd., at that time.
- (9) On 14th November, 1952, J. M. Gupta, S. K. Sanghi and S. N. Dudani, Directors of Dalmia Dadri Cement Ltd. decided to terminate the Managing Agency and Shri Vishnu Kumar, Secretary, D. D. C. Ltd., was asked to convene an extra-ordinary meeting of Dalmia Dadri Cement Ltd., on 2nd December, 1952. The unexpired period of the Managing Agency was 65 months and 26 days. (Ex. 1059).
- (10) At that time the investing public was substantially interested in D. D. C. Ltd. The following was the shareholders' position:—

	Preference shares	Ordinary shares	Deferred shares
Dalmia Jain Group	6,476	81,580	1,62,200
Outsiders	3,068	38,675	87,800
TOTAL	9,544	1,20,255	2,50,000

- (11) The extra-ordinary meeting of the shareholders of D. D. C. Ltd. was held on 2nd December, 1952 (Ex. 869/Vol. I/P. 28). It was attended by

- (i) Shri Raghunath Das Dalmia
- (ii) Shri Banarsi Das Saraf
- (iii) Shri Vishnu Kumar
- (iv) Dalmia Jain & Co. (Jind. State) Ltd., represented by R. K. Gupta.
- (v) M/s. Rajputana Investment Ltd., represented by Prahlad Rai.
- (vi) Dadri Marketing Ltd., represented by Shri Raja Ram Gupta.

Vishnu Kumar, Secretary, Dalmia Dadri Cement Ltd., and Secretary, Dalmia Jain & Co. (Jind State) Ltd., held proxies of:

- (i) R. Dalmia
 - (ii) R. P. Gurha (Director D. D. C.)
 - (iii) S. L. Verma
 - (iv) J. M. Gupta
 - (v) P. P. Gupta.
- (12) At the meeting held on 2nd December, 1952, the resolution terminating the Managing Agency Agreement was approved and the Directors were authorised to settle the amount of compensation payable to the Managing Agents (Ex. 869/Vol. I/P. 28).

- (13) R. Sharma, representative of the Managing Agents and S. K. Sanghi, representative of Dalmia Dadri Cement Ltd. recommended the payment of Rs. 6,00,000 as compensation (Ex. 441/P. 61-62).
- (14) S. K. Sanghi was subservient to R. Dalmia being an employee of Bennett Coleman & Co. Ltd., a private company under the control of R. Dalmia.
- (15) On 15th December, 1952, S. K. Sanghi, S. N. Dudani and R. P. Gurha, Directors of Dalmia Dadri Cement Limited approved the payment of Rs. 6,00,000 by way of compensation to the Managing Agents (Ex. 1059/Vol. II/64-65 & 1061/P. 140).
- (16) S. N. Dudani and R. P. Gurha were subservient to R. Dalmia, being the employees of D.C.P.M., a private company under the control of R. Dalmia.
- (17) D. D. C. Ltd., had no independent legal and other advice.
- (18) On 30th December, 1952, an extra-ordinary General meeting of the shareholders was called. This meeting was attended by: (Ex. 869/Vol. I/P. 30).
 - (i) Vishnu Kumar
 - (ii) Prabhu Dayal Agarwal
 - (iii) Banarsi Das Saraf
 - (iv) M/s. Dalmia Jain & Co. (Jind State) Ltd. represented by R. K. Gupta.
 - (v) M/s. Rajputana Investment Co. Ltd., represented by Prahlad Rai Bansal.
 - (vi) Raghunath Das Dalmia.
- (19) Vishnu Kumar held the proxies of
 - (i) R. Dalmia
 - (ii) J. Dalmia
 - (iii) S. N. Dudani (Director, D. D. C.)
 - (iv) R. P. Gurha (Director, D. D. C.)
 - (v) S. K. Sanghi (Director, D. D. C.)
 - (vi) P. P. Gupta
 - (vii) M. K. Roy
 - (viii) S. L. Verma.
- (20) Despite this Vishnu Kumar was voted to the Chair.
- (21) Compensation of Rs. 6,00,000 was approved at the meeting.
- (22) The shareholders were not told the reasons for the termination of the Managing Agency.
- (23) The computation of the amount of compensation viz., Rs. 6,00,000 was not equitably done. In calculating the average income of the Managing Agents during the past 3 years, the estimated profit for 1952 was taken into account instead of calculating on the basis of the preceding three complete years, namely, 1949, 1950 and 1951.

- (24) While the compensation of Rs. 6,00,000 was paid to Dalmia Jain (Jind State) Ltd. the shareholders of D. D. C. Ltd. were not given any dividend for 1951 to 1954 although D. D. C. Ltd. made substantial profits.

If the Managing Agency had continued for the unexpired period of 65 months and 26 days, D. D. C. would have been liable to pay the following remuneration to the Managing Agents and would have retained their services:—

Year ending	Profits for the purposes of Cal. Mg. Agent remuneration	Commission 10%	Office allowance	Total	Present worth as on 1-1-53 discounted @ 4½%
31-12-1952	17,13,014	1,71,301	935-0-0	1,72,236	1,72,236
31-12-1953	16,65,874	1,66,587	12,000-0-0	1,78,587	1,70,895
31-12-1954	9,63,689	96,369	12,000-0-0	1,08,369	99,236
31-12-1955	9,48,536	94,854	12,000-0-0	1,06,854	93,635
31-12-1956	2,63,020	25,302	12,000-0-0	38,302	32,119
31-12-1957	99,491	9,949	12,000-0-0	21,949	17,613
1st January to 27-5-58	N.A.	N.A.	5,000-0-0	5,000	4,012
TOTAL ..	56,53,624	5,65,362	65,935-0-0	6,31,297	4,99,746

Therefore, in fact, compensation larger than the sum that would have been payable in the normal course was paid; and the only concern that benefited was the Managing Agents, which means, R. Dalmia.

The persons responsible were primarily the then directors and Secretary of D. D. C. Their names are as follows:—

- (1) Virendra Singh Chorida, Director (from 23-5-50 to 3-12-52).
- (2) Shital Prasad Jain, Director (from 25-5-50 to 29-12-1952).
- (3) J. M. Gupta, Director (from 21-1-52 to 29-12-52).
- (4) S. K. Sanghi, Director (from 3-9-52 to 17-6-53).
- (5) S. N. Dudani, Director; (from 3-11-52 to 3-5-58).
- (6) R. P. Gurha, Director, (5-12-52 to 3-5-58).
- (7) Vishnu Kumar, Secretary.

Out of these persons, Shital Prasad Jain did not file any reply. S. K. Sanghi, S. N. Dudani, R. P. Gurha and Virendra Singh Chordia have not refuted the allegations in the Statement of Matters.

The plea of J. M. Gupta is as follows:—

“I was no party to the payment of any compensation to DJ (Jind State) Ltd. by D. D. C. Ltd. on account of the termination of the Managing Agency. All that I can recall, is that a resolution terminating the Managing Agency of DJ (JS) Ltd. was passed at a meeting of the Board, at which I was present. It was stated in the Resolution that the Directors be authorised to settle the liability, if any, arising out of the termination of the said Managing Agency. This resolution I understand was confirmed by an extraordinary general meeting of the D. D. C. Ltd. held after I had ceased to be a director of D. D. C. Ltd. on 29-12-1952.”

As he was party to the resolution terminating a Managing Agency, he must be held responsible even though the amount of Rs. 6 lacs as compensation was paid after he ceased to be a director.

Vishnu Kumar in his written statement dated 13-6-1960 has not defended the termination. He has raised legal objections similar to those raised by S. N. Dudani, S. K. Sanghi and R. P. Gurha. In his affidavit, however filed on 5-4-1962 as Secretary of the Company, he seeks to justify the payment of compensation by D. D. C. In this affidavit he has referred to certain orders of the Appellate Assistant Commissioner of Income-tax. Certified copies of these orders have not been placed before us.

The Income Tax authorities were concerned with the question of taxability of the amount paid as compensation and not with whether the termination of the Managing Agency agreement amounted to a disregard of honest commercial practice.



CHAPTER VI

BREACH OF TRUST

There was a breach of trust of the fiduciary obligations of the then Directors of D. D. C. Ltd. in that they failed to act in the interests of D. D. C. Ltd. but acted on the dictates of the D. J. Group to further the interests of the D. J. Group to the detriment of the interests of D. D. C. Ltd. in the following cases:—

- (a) Investments of the funds of D. D. C. Ltd. in the shares of sister companies.
- (b) For the grant of loans of Rs. 12 lacs to Jaipur Udyog Ltd. and Rs. 25 lacs to Rajasthan Udyog Ltd.
- (c) For the termination of the managing agency and payment of Rs. 6 lacs as compensation to Dalmia Jain (Jind State) Ltd.
- (d) For loan of Rs. 18 lacs to Allenberry & Co.

As we have dealt with each of these cases under the head of 'Disregard of Honest Commercial Practice', we merely state that they also amounted to breaches of trust.

The Directors referred to above are :—

M. L. Raizada
N. C. Roy
J. Dalmia
M. P. Modi
Shital Prasad Jain
V. S. Chordia
J. M. Gupta
R. K. Dalmia
S. K. Sanghi
S. N. Dudani
R. P. Gurha
M. P. Sharma



CHAPTER VII

ACQUISITION OF SHARES BY R. DALMIA

R. Dalmia acquired 3,739 Preference Shares of Rs. 100 each, 47,067 Ordinary Shares of Rs. 10 each and 1,04,580 Deferred Shares of Re. 1 each from the investing public.

The acquisition of shares was in disregard of honest commercial practice for the following among other reasons:—

- (a) Dividends were not declared on the shares of D.D.C. Ltd. during 1951 to 1955 although D.D.C. Ltd. made substantial profits. Thereby the shareholders began to feel that these shares were unremunerative and started liquidating their holdings. R. Dalmia took this opportunity to acquire the shares in large quantities.
- (b) Most of the shares were acquired at about 81% of the nominal value of the shares although the intrinsic value was much more.
- (c) These shares were not quoted on any recognised stock exchange and it was not easy for the shareholders to know the then price of the shares.
- (d) After more than 99% of the shares had been acquired by R. Dalmia the arrears of dividend on Preference Shares @ 6% for 1951 to 1955 and the Dividend on Ordinary and Deferred Shares @ 6% were declared in September 1956 and a sum of Rs. 3,73,473 was distributed by way of dividend.
- (f) The bulk of the Rs. 3,73,473 was reaped by the following companies of R. Dalmia:

	Rs.
(1) Patiala Biscuit Mfg. Ltd.	2,85,540/-/-
(2) Bharat Union Agencies Ltd.	78,323/15/10
(3) Asia Udyog Private Ltd.	897/-/2
(4) South Asia Industries Ltd.	216/-/-
(5) Bharat Development Private Ltd.	108/-/-
(6) Rajasthan Udyog Private Ltd.	687/-/-
	3,65,772/-/-

- (g) Thus R. Dalmia received the arrears of dividend at the expense of the investing public.

The acquiring of shares of D.D.C. Ltd., by Swadesh Nirman Private Ltd. under Section 395 in exchange for its Deposits Receipts (later to be substituted by the allotment of the shares of Swadesh Nirman Private Ltd.) was also in disregard of honest commercial practice because—

- (a) This defeated the recovery provisions of the Income-tax Act in respect of Income-tax outstanding, if any, due by Bharat Union Agency and South Asia Industries which held the shares of D. D. C. Ltd. as assets before Swadesh Nirman Private Ltd. acquired them under the scheme. The shares of Swadesh Nirman Private Ltd. received by Bharat Union Agencies Ltd., and South Asia Industries Ltd., in exchange for the shares of D.D.C. Ltd. would not be easily marketable.

- (b) Under the scheme R. Dalmia wanted Swadesh Nirman Private Ltd. to acquire the valuable shares of D.D.C. Ltd. held by other companies in exchange for "Deposit Receipts" of Swadesh Nirman Private Ltd.
- (c) The provisions of the Control of Capital Issues Act were circumvented by the process of issuing the so-called "Deposit receipts".

Object.—The object was to acquire all the shares of D.D.C. Ltd. at low rates so that outside interests and intervention be completely eliminated.

Acquisition of shares

Neither R. Dalmia, nor the Company, nor the directors have controverted the allegations regarding the acquisition of shares.

	Rs.
<i>Jain to the D. J. Group</i>	
(i) In acquisition of the Ordinary and Deferred shares of D.D.C., Ltd. through D.C.P.M., Asia Udyog Ltd. and B.U.A.	10,93,988
(ii) By way of arrears of Dividend on Preference shares through D.C.P.M., Asia Udyog Ltd. and B.U.A.	82,266
	<hr/> 11,76,254
<i>Loss to the investing public</i>	11,76,254

The gain to R. Dalmia resulted in a corresponding loss to the Investing public.

Particulars of the acquisition

It is not possible to set out with accuracy the exact number of shares that were beneficially held by R. Dalmia and his family and employees and the number held by the investing public. We gave a detailed list of the two categories in our statements of matters and those who were in a position to know have not come forward to show that our analysis was wrong. In any case, the broad picture that these figures furnish is enough to serve as a working guide.

According to our calculations the investing public held 3,739 preference shares 47,067 ordinary shares and 1,04,580 deferred shares. R. Dalmia held the following: Preference 5,805, Ordinary 73,188 and Deferred 1,45,420.

6,200 shares registered in name of J. P. Jain, the beneficiary being Allenberry & Co. Ltd., were transferred to Bharat Union Agencies Ltd. on 6th September, 1954.

The beneficial ownership of 17,000 shares registered in the following names was with Bharat Union Agencies Ltd:—

Shri T. A. Desai	2,500
Shri B. M. Lal	2,500
Shri S. K. Sanghi	1,500
Shri Chandra Vadan	1,500
Shri J. S. Mittal	3,500
Shri Vishnu Kumar	2,500
Shri L.N. Baid	1,000
Shri R.P. Gurha	2,000
	<hr/> 17,000

On 5th May 1954, 12,000 Ordinary Shares held by the D. J. Group were transferred to M. P. Sharma but Bharat Union Agencies continued to remain the beneficiary.

On 31st March, 1955, the beneficial ownership of the shares held by R. Dalmia through the companies under his control was as follows:—

	Pref.	Ord.	Defd.
(a) Asia Udyog Private Ltd.	2,996	36,284	37,305
(b) Bharat Union Agencies Private Ltd. ..	2,020	53,400	26,200
(c) Shri R. Dalmia	—	—	200
(d) Bharat Insurance Co.	2,800	—	—
(e) Others	1	8	1,19,020
	7,817	89,692	1,82,725

The value of the shares held by B.U.A. as shown in the above table, was as follows as per its books of account:—

	Rs.	Rs.
Preference shares	2,020	1,41,500
Ordinary shares	53,400	3,73,975
Deferred shares	26,200	19,325
TOTAL ..		5,34,800

On 30th September, 1955, all the above shares were transferred by Bharat Union Agencies Ltd. to Asia Udyog Ltd. for Rs. 7,62,200 as stated below:—

	Rs.	Rs.
Preference shares	2,02	2,02,000
Ordinary shares	53,400	5,43,000
Deferred shares	26,200	26,200
		7,62,200

Thus B.U.A. made a capital profit of Rs. 2,27,400 on the above shares.

2,800 Preference Shares held by Bharat Insurance Company Ltd. were also transferred to Asia Udyog Ltd.

The effect of the above transfers was that on 1st October, 1955, Asia Udyog Ltd. held 7,816 Preference, 89,684 Ordinary and 63,505 Deferred Shares of the face value of Rs. 17,43,945 which constitute 72% of the paid-up capital of D.D.C. Ltd.

There were further transfers and re-transfers of these shares between Asia Udyog Ltd. and B.U.A. Ltd. and South Asia Industries Ltd.

In December 1955, Asia Udyog Private Ltd. transferred 5,000 Preference Shares valued at Rs. 3,50,000 and 60,100 Ordinary Shares valued at Rs. 4,20,700 to South Asia Industries Private Ltd., a company belonging to R. Dalmia. The Ordinary Shares were re-transferred to Asia Udyog Ltd. for Rs. 4,35,725 and thus South Asia Industries Ltd. made a capital profit of Rs. 15,025.

On 31st March 1956, R. Dalmia held 7,817 Preference, 89,712 Ordinary and 1,82,725 Deferred Shares, the beneficial interest of which was with the following:—

	Pref.	Ord.	Defd.
(a) Asia Udyog Ltd. (44 individuals) ..	2,816	89,684	63,505
(b) Bharat Union Agencies Private Ltd. (B. L. Agarwal)	—	20	—
(c) South Asia Industries Private Ltd. ..	5,000	—	—
(d) R. Dalmia	—	—	200
(e) Others	1	8	1,19,020
	7,817	89,712	1,82,725

On 30th April 1956, South Asia Industries Ltd. transferred 5,000 preference Shares to Patiala Biscuit Manufacturers Ltd. for a sum of Rs. 3,65,000 and made a profit of Rs. 15,000.

South Asia Industries Ltd. thus made a total capital profit of Rs. 30,025 on the purchase and sale of Ordinary and Preference Shares of D.D.C. Ltd.

Patiala Biscuit Manufacturers Ltd. purchased 4,518 Preference Shares (from Vishwa Industries Ltd. 204 and Asia Udyog Ltd. 4,314) at a total price of Rs. 3,82,063. Thus P.B.M. Ltd. held 9,518 Preference Shares.

Between April and May 1956, 1,16,642 Ordinary and 1,18,420 Deferred Shares were transferred by Asia Udyog Ltd. to Bharat Union Agencies Ltd. on which Bharat Union Agencies reaped the dividend in September, 1956.

The patiala Biscuit Manufacturers Ltd. received a dividend of Rs. 2,85,540 on 9,518 Preference Shares acquired by it a few months earlier and which were re-transferred on 7th November, 1956 to South Asia Industries Ltd.

Patiala Biscuit Manufacturers Ltd. acquired 9,518 shares for Rs. 7,47,063 and transferred the same to South Asia Industries Ltd. for Rs. 9,60,800. Thus Patiala Biscuit Manufacturers Ltd. made a capital profit of Rs. 2,04,737.

Thus the Patiala Biscuit Manufacturers Ltd. was benefited to the extent of Rs. 4,90,277 by way of dividend and capital profit on an investment of Rs. 7,47,000 for few months.

At that time the Patiala Biscuit Manufacturers was running in to loss and on 31st December 1955, the accumulated losses amounted to Rs. 25,89,000 against its paid-up capital of Rs. 30 lakhs.

By September 1956, R. Dalmia had acquired more than 99·7% of the shares of D.D.C. Ltd. and only shares of the face value of Rs. 4,650 were held by the investing public as follows:—

	Pref.	Ord.	Defd.
Shri Banarsidass Saraf	—	—	500
Smt. Sukhdai Devi	6	75	150
Shri Ambaprasad Joshi	4	50	100
Shri K. C. J. Satyawadi	—	5	—
Shri Jagdish Behari	2	25	50
Shri Gokal Chand Jain	—	—	100
Custodian of Ev. Property (Khalifa Mohd. Sadiq)	4	50	100
	16	205	1,000

In September, 1956, D.D.C. Ltd. declared the following dividends on its shares.

- (a) On Preference Shares for the last five years (1951—1955) @ 6%.
- (b) Ordinary Shares @ 6%.
- (c) Deferred Shares @ 6%.

A sum of Rs. 3,73,473 was distributed by way of dividend.

The Investing Public lost Rs. 82,266 by way of arrears of dividend on Preference Shares as the shares held by them were acquired by R. Dalmia before the declaration of dividend.

Year in which the shares were acquired by the D. J. Group					No. of Pref. shares acquired	Arrears of dividend	Date of dividend per annum	Amount of arrears of dividend lost by Inv. Public
1952	..	..	..	..	671	1 year	6%	Rs 4,026-0-0
1954	..	..	..	..	879	3 years	6%	15,822-0-0
1955	..	..	..	..	462	4 years	6%	11,088-0-0
1956	..	..	..	..	1,711	5 years	6%	51,330-0-0
					3,723			82,266-0-0



CHAPTER VIII

ACQUISITION OF SHARES BY SWADESH NIRMAN

We will now examine the acquisition of the shares of D.D.C. by Swadesh Nirman Private Ltd. The particulars are as follows:

Swadesh Nirman Private Ltd., was incorporated as a private limited company on 6th November 1956, with a paid-up capital of Rs. 50,000.

On the very next day after its incorporation, i.e. on 7th November 1956, Swadesh Nirman Private Ltd., circulated a scheme under Section 395 of the Companies Act 1956, amongst the shareholders of D.D.C Ltd. The salient features of the scheme are:—

Clause (ii)

- (a) That Swadesh Nirman Private Ltd. made an offer to buy all the shares of Dalmia Dadri Cement Ltd. at the following rates:

Rs. 105 for a Preference Share of Rs. 100 each fully paid.

Rs. 35 for an Ordinary Share of Rs. 10 each fully paid.

Rs. 3-8 for a Deferred Share of Re.1 each fully paid.

- (b) The purchase consideration was to be paid in the form of three years Deposit, Receipts, carrying interest of 6% per annum.

or

- (c) By allotment of the Preference Share of Rs. 2,500 each of Swadesh Nirman Private Ltd. in exchange of 25 fully paid-up Preference shares of Dalmia Dadri Cement Ltd., and one fully paid equity share of Rs. 2,500 each of Swadesh Nirman Private Ltd., for 250 fully paid-up Ordinary shares or 2,500 fully paid-up Deferred shares of D.D.C. Ltd.

Clause (iii)

The shareholders should choose any of the above options and intimate the same while sending their approval. In case no such information is received, it will be deemed that they have chosen the option mentioned in sub-clause (ii) (b) above, if the consideration shall be paid to them in the form of the above stated "deposit receipts".

Clause (iv)

The shareholders of the Dalmia Dadri Cement Ltd., were required to communicate their decision within four months of the date of the scheme. Regarding dissenting shareholders as defined in Section 395 of the Companies Act, Swadesh Nirman Private Ltd. was to give notice within two months after the expiration of four months and thereafter Swadesh Nirman Private Ltd. would be entitled and bound to acquire shares on the terms on which the shares of the consenting shareholders were acquired.

Clause (viii)

That the paid-up capital of the Swadesh Nirman Private Ltd. was Rs. 50,000 and under the control of Capital Issues Act it was in a

position to issue further shares of Rs. 4,50,000 only. In case it was required to issue further shares pursuant to clause (iii) above, it would do so either with the sanction of the Controller of Capital Issues or by lot of Rs. 5,00,000 yearly without such sanction. In that case the allotment of shares of Swadesh Nirman Private limited to the shareholders of Dalmia Dadri Cement Ltd. was to be made proportionately as and when allotments were to be made.

Clause (ix)

It was mentioned that Swadesh Nirman Private Ltd. had resources to arrange funds for the payment in cash even to all the shareholders of Dalmia Dadri Cement Ltd. if they so desire.

Under the scheme Swadesh Nirman Private Ltd. acquired all the 100% shares of D.D.C. Ltd. as set out below:

(a) Under clause (ii) (c) of the Scheme

	Pref.	Ord.	Defd.
(1) South Asia Industries Ltd.	9,519	100	91,100
(2) Bharat Union Agencies Ltd.	—	1,18,692	1,18,480
(3) Asia Udyog Pvt. Ltd.	—	—	28,000
(4) Matra Bhumi Nirman Ltd.	—	—	8,300
(5) Bharat Development Private Ltd. ..	5	158	2,170
(6) R. Dalmia	—	—	300
	9,524	1,18,950	2,48,350

(b) Under clause (ii) (a) of the Scheme :

(1) Bharat Development (P) Ltd.	—	100	100
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(c) Under clause (ii) (b) of the Scheme :

	Pref.	Ord.	Defd.
(1) Banarsi Dass Saraf	—	—	500
(2) Sukhdai Devi	6	75	150
(3) Ambaprasad Joshi	4	50	100
(4) K. C. Jain Satyawadi	—	5	—
(5) Jagdish Behari	2	25	50
(6) Gokalchand Jain	—	—	100
(7) Custodian of Evacuee Property Re (Khalif Mohd. Sadiq)	4	50	100
(8) Rajasthan Udyog Ltd.	4	—	550
(9) Gheti Devi	—	1,000	—
	20	1,205	1,550
Total of (a), (b) and (c)	9,544	1,20,255	2,50,000

Asia Udyog Ltd., Bharat Union Agencies Limited and South Asia Industries Limited, Bharat Development Private Limited and Matra Bhoomi Nirman Private Limited at that time were under the effective control of R. Dalmia.

According to the terms of the scheme, the above companies which surrendered the shares were entitled to the shares of Swadesh Nirman Private Limited as shown in a statement that was attached to the Statement of Matters.

On 27th May 1957, Swadesh Nirman Private Limited allotted 72 Preference shares and 108 equity shares to the following:

	Pref.	Equity
South Asia Industries Ltd.	72	6
Bharat Union Agencies Ltd.	—	87
G. Ramachandran on behalf of Asia Udyog Ltd.	—	11
K. L. Gulati on behalf of Matra Bhoomi Nirman Private Ltd.	—	3
Bharat Development Private Ltd.	—	1
TOTAL	72	108

Swadesh Nirman Private Limited on that day had yet to allot 308 Preference shares and 465 Ordinary shares of Rs. 2,500 each to South Asia Industries Limited and Bharat Union Agencies Limited as shown in the statement. This allotment would have taken another 4 years because under the Capital Issues Control Act, Swadesh Nirman Private Limited could not allot shares of the face value of more than Rs. 5 lakhs per annum.

R. Dalmia was not only the sole beneficiary but was also in effective control of Swadesh Nirman Private Limited because:

- (a) The promoters of Swadesh Nirman except M. L. Sodhani, were employees of the companies under the control of R. Dalmia.
- (b) These persons were under the influence of R. Dalmia and were not in a position to act independently.
- (c) Under the scheme, an option was given to the companies to receive payment in cash or by way of shares of Swadesh Nirman Private Ltd. This shows that Swadesh Nirman Private Limited, if necessary, had to arrange and invest up to Rs. 60 lakhs. Neither the Promoters of Swadesh Nirman Private Ltd. nor that company have such large financial resources.
- (d) The fact that the companies under the control of R. Dalmia, viz., South Asia Industries, Bharat Union Agencies Ltd. surrendered the shares and did not demand payment in cash but accepted instead scripts of the Swadesh Nirman Private Limited shows that Swadesh Nirman Private Ltd., was an R. Dalmia concern under the control of R. Dalmia.
- (e) The fact that the R. Dalmia companies opted for the allotment of shares of Swadesh Nirman Private Ltd., as per clause (ii) (c) of the Scheme and did not opt for the alternative offer of Rs. 35 for every ordinary share of Rs. 10 each and Rs. 3-8 for every deferred share of Re. 1 each in cash showed that Swadesh Nirman Private Limited was one of the concerns of R. Dalmia. It made no difference to R. Dalmia whether the shares of D.D.C. Ltd., were held by Swadesh Nirman Private Ltd. or any of his other concerns.
- (f) The fact that all the shares were surrendered within 18 days from the date of the issue of the scheme mostly in exchange for the shares and Deposit Receipts of Swadesh Nirman Private Limited show that Swadesh Nirman was an R. Dalmia concern.

- (g) Swadesh Nirman Private Limited later loaned the shares of D.D.C. Ltd., to R. Dalmia and the companies controlled by him as detailed below to enable those parties to borrow funds on the securities of these shares.
- (i) Loan of 19,000 Deferred shares of Re. 1 each to R. Dalmia approved at the Directors meeting held on 18th January 1957.
 - (ii) Loan of 8,000 ordinary shares of Rs. 10 each to South Asia Industries Private Ltd. approved at the Directors meeting on 18th January, 1957.
 - (iii) Loan of 23,950 Ordinary shares to M/s Dalmia Dadri Cement Limited for purposes of pledging them as security with any bank or otherwise against the loan required by them and approved on 18-12-1956.

A company does not normally part with its valuable securities for being pledged to outsiders even though they may be substantial shareholders. The fact that such shares were loaned by Swadesh Nirman Private Ltd. as above shows that it was a concern under the effective control of R. Dalmia.

- (h) A. R. Dalmia was the principal beneficiary of South Asia Industries Ltd., Bharat Union Agencies limited, Asia Udyog Ltd. and was also the sole beneficiary of Swadesh Nirman Private Limited, it made no difference to him whether the shares of D.D.C. Ltd., were held by South Asia Industries or Bharat Union Agencies Limited or Asia Udyog Limited or all the three companies or Swadesh Nirman Private Limited.
- (i) On 30th September, 1958 Shri Ved Vyas, Counsel for Dalmia Dadri Cement Ltd. stated before the Commission that R. Dalmia now owned all the shares in D.D.C. Ltd.

Swadesh Nirman Private Ltd. went into liquidation on 29th September, 1959. (Exs. 628 & 542/P. 81).

On 24-11-59 a summons was issued to R. D. Aggarwal Liquidator of Swadesh Nirman Private Ltd. to produce its books of accounts before the Commission.

The liquidator did not produce the books.

CHAPTER IX

GAINS BY R. DALMIA

We turn now to the gains by R. Dalmia. They are as follows:—

Under the Articles of Associations of D.D.C. Ltd. the Preference Shareholders were not entitled to the Surplus in case of the repayment of Capital. The Surplus over the paid-up capital would only be available to the Ordinary and Deferred shareholders.

The break down value of the Ordinary and Deferred shares on the basis of the net worth of Assets of D.D.C. as disclosed by its Balance Sheets for the years 1951 to 1954 would, at its lowest, be as follows:

On the basis of the Balance sheet as at							Ordinary shares of Rs. 10 each	Defd. shares of Rs. 1 each
							Rs.	Rs.
31st December, 1951	..	..	..	..	..	..	20	2
31st December, 1952	..	..	..	..	..	..	21	2
31st December, 1953	..	..	..	..	..	..	30	3
31st December, 1954	..	..	..	..	..	..	33	3

R. Dalmia was the sole beneficiary of the following Companies at the time when the shares of D.D.C. Ltd. were acquired by him during 1952 to 1956.

1. D.C.P.M.
2. Asia Udyog Ltd.
3. Bharat Union Agencies Ltd.

R. Dalmia was thus benefited by at least Rs. 10,93,988 as set out below:

(a) In acquiring 43,762 Ordinary shares as per Ann...D	..	..	..	9,17,402
(b) In acquiring 91,730 Deferred shares as per Ann...E	..	..	..	1,76,586
TOTAL	..	..	..	<u>10,93,988</u>



CHAPTER X

INVESTMENT IN SHARES

As regards the investment of shares the case of Shanti Prasad Jain is that he ceased to be a director of D.D.C. Ltd., in 1947 and that the D. J. Group ceased to exist after 31-5-48. He said that the investments prior to 31-5-48 were sound and were made in good faith. He said that he had no responsibility for the subsequent investments.

The plea of J. Dalmia is similar except that he admitted that he continued to be a director of D.D.C. Limited till March, 1950.

Both of them say that Bharat Ayurvedic Pharmacy Ltd. was not a concern of the D. J. Group; nor under its control. We therefore exclude the investments made by D.D.C. in this company from our consideration.

The remaining investments were made with the objects set out in the Statements of Matters. It will be clear from the statements of some of the directors that the investments were made at the instance by the managing agents and R. Dalmia and J. Dalmia.

M. L. Raizada in his written statement has stated—

“The matter of investment in shares is one which can be decided only by Managing agents on whom rests the responsibility to employ surplus funds to the best advantage of the company. That I do not remember to have ever attended any meeting in which the matter of investment in shares was discussed”.

“As already submitted it was for the Managing Agents to employ the funds of the company to the best advantage of the company, and as such experienced men in the share line were at the helm of affairs and they decided the investment policy over the head of the directors, the directors had no say in the matter.”

“As regards investments in shares of D.C.P.M. on 30-9-52 and in shares of Jaipur Udyog Ltd., on 30-11-53, 30-6-55 and 14-10-55, they relate to a period when I was not even a Director of the Company.”

According to him the affairs were controlled by Managing Agents and particularly by R. Dalmia and J. Dalmia.

J. M. Gupta says,

“...I am not responsible for any of the inter-company investments. I can state most definitely that I had no personal interest in the matter. I was no party to any transaction which on the face of it, might appear to be unsatisfactory from the point of view of the company.

I am not aware of the purchase of any shares of D. J. Aviation Ltd. on or about the 30th April, 1952. I was no party to any such purchase. Nor was I concerned with the purchase of 6,400 Preference shares of D.C.P.M. Ltd. on or about 30-9-1952. So far as I can recollect, the said purchases were never brought up before a meeting of the Board attended by me.”

M. P. Sharma was a Director of D.D.C. from 21-5-54 to 30-3-1956. He has not justified the investments. His plea is that he acted according to the orders of his superior officers.

We will now give the details of these investments.

Dalmia Dadri Cement Ltd., a Public limited company in which the investing public were interested purchased the shares of the following companies in which R. Dalmia was mainly interested in disregard of honest commercial practice.

(a) *Rohtas Industries Ltd.*

On 31st January, 1949, 675 Preference shares of Rohtas Industries Ltd. @ Rs. 100 each from Dadri Marketing Company Limited.

(b) *Sir Shapurji Broacha Mills Ltd.*

On 31st July 1949, 2,700 Conversion shares of S.S.B. Mills Ltd., of Rs. 100 each at Rs. 290 from Dadri Marketing Co. Ltd.

(c) *Dalmia Jain Aviation Ltd.*

(i) On 31st July 1950, 30,000 Ordinary shares of D. J. Aviation from D.C.P.M. for Rs. 3,00,000.

(ii) On 30th April, 1952, 2,13,500 shares of D. J. Aviation from Rashtriya Agencies Ltd., for Rs. 21,35,000.

(d) *Dalmia Cement and Paper Marketing Co. Ltd.*

Date of Purchase	No. of Pref. shares	Rate	Amount
Prior to January, 1948	830	15,000	1,24,500
31-10-1950	5,282	5,677	2,99,850
30-9-1952	6,400	9,400	6,01,600
	12,512		10,25,950

(e) *Jaipur Udyog Limited.*

Date of Purchase	No. of Ordy. shares;	Rate	Amount	From whom purchased
	Rs.	Rs.	Rs.	
20-11-51	60,000	10	6,00,000	Jaipur Traders Ltd. Premier Trading Corpn. Ltd.
30-11-53	50,000	10	5,00,000	Asia Udyog Ltd.
30-6-55	2,50,000	10	25,00,000	South Asia Industries Ltd.
14-10-55	50,000	10/8/-	5,25,000	South Asia Industries Ltd.

Other purchases were as per next page.

Statement showing the Purchase and Sale of Miscellaneous Shares in D. J. Group of Companies.

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Name of the Company	Type of script	Purchases			Sales			Profit or Loss	Amount	Dividend Recd.
		Date of purchase	No. of shares	Rate Rs.	Date of sale	No. of shares	Rate Rs.			
		Prior to								
1. Kharkhari Coal Co.	Prof.Sh.	Jan. 48	3,220	150	4,83,000	3,220	150	—	—	—
2. Bharat Fire & Gen. Ins. Co. Ltd.	Defd. Sh.	1-1-48	65,000	1	65,000	65,000	1	—	—	6,150-0-0
		1-1-48	520	125	65,000	245	125	—	—	1,229-15-0
		31-10-48	135	125	16,875	610	29-14-0	—	39,026-4-0	1,830-0-0
		16-2-50	200	30	6,000	740	10	—	—	1,830-0-0
4. Dadri Marketing Ltd.		1-5-48	740	10	7,400	740	10	—	—	11,039-15-0
5. Maheshpur Colliery Ltd.		31-7-48	10,000	10	1,00,000	1,00,000	10	—	—	—
6. Edward Kev(s) Ltd.	Ord. Sh.	31-7-50	26,000	4-8-3	1,22,000	31-3-52	26,000	—	—	—
7. Dalmia Jain Airways Ltd.		13-2-52	1,90,000	2-4-0	4,27,500	31-3-52	2,80,000	Profit	8,750-0-0	—
		14-2-52	90,000	2-4-0	2,02,500			6,38,750	—	—
8. Pepsu Trading Co.		31-10-55	10,000	10	1,00,000	31-1-56	10,000	—	—	—

These transactions were not effected in good faith for the reasons set out below:

- (a) These investments were not in the interest of D.D.C. Limited;
- (b) They cannot be justified on any normal business ground;
- (c) They were made to ultimately benefit R. Dalmia and to enable him to retain control of the companies in the shares of which the money was invested.
- (d) Though some of the above shares were purchased by D.D.C. Ltd., and retained for a long period still they were not registered in its name.
- (e) The same shares were purchased at varying rates at short intervals;
- (f) No dividend was received on these shares except on Bharat Insurance Co., Rohtas Industries, S.S.B. Mills Limited and Jaipur Udyog Ltd.;
- (g) In any case, it was not the normal business of D.D.C. a cement manufacturing company, to buy and sell shares;
- (h) On the resale of these shares D.D.C. suffered a net loss of -Rs. 72,910/4; and
- (i) R. Dalmia did not declare any dividend during the years 1951—54 and the available funds were invested in the shares of sister companies.

The objects were:—

- (a) To use the funds of the public limited company, D.D.C. for the ultimate benefit of R. Dalmia and his concerns.
- (b) To adjust by book entries the debit balance of R. Dalmia companies (mostly private) by purported purchases of investments at prices to suit R. Dalmia.
- (c) To enable R. Dalmia to retain control over the companies in the shares of which the money was invested, by D.D.C. Ltd.

Loss to D.D.C. Ltd.:—

- (a) The net loss on re-sale of these shares was Rs. 72,910-4-0.
- (b) The loss to D.D.C. Ltd. was also the loss of interest amounting to Rs. 3,78,897.

The gain to the D. J. Group was the continued use of funds of public companies which enabled it to retain control of the sister companies. In this case, R. Dalmia used the funds of D.D.C. Ltd. ranging from Rs. 6,86,150 to Rs. 33,86,560.

R. Dalmia also gained as follows:—

- (a) Net gain on re-sale Rs. 72,910.
- (b) Gain by way of interest Rs. 3,78,897.

Particulars re: Rohtas Industries Ltd.

1. It was an R. Dalmia concern.

2. The 675 shares purchased at Rs. 100 per share on or about 31st January, 1949, were sold between 29th November and 6th December, 1950 @ Rs. 52 per share i.e. for Rs. 35,100.
3. Dalmia Dadri Cement Ltd. suffered a loss of Rs. 32,400 on this deal.
4. Dalmia Dadri Cement Ltd. retained these shares for 22 months and received a dividend of only Rs. 2,868-12-0 which work out to 2.3%.

Particulars re: Sir Shapurji Broacha Mills Ltd.

1. At that time S.S.B. Mills Ltd., was an R. Dalmia concern.
2. On or about 31st July, 1949, D.D.C. Ltd. was made to purchase from Dadri Marketing Co. Ltd. 2,700 conversion shares of S.S.B. Mills Ltd. of Rs. 100 each at the rate of Rs. 290 per share, i.e. for Rs. 7,83,000. The rate of Rs. 290 per share was higher than the rate of Rs. 200 per share at which D. J. Airways purchased from D.C.P.M.
3. Dadri Marketing Co. Ltd. was acting as selling agents of D.D.C. Ltd. On 31st July, 1949, a sum of Rs. 7,78,682 was due by Dadri Marketing Co. Ltd. to D.D.C. Ltd.
4. R. Dalmia was interested in Dadri Marketing Co. Ltd. The amount of Rs. 7,83,000 was credited to the account of Dadri Marketing Co. Ltd., against the amount of Rs. 7,78,682 due from it.
5. Vishnu Kumar, Secretary of D.D.C. Ltd., was one of the Directors of Dadri Marketing Co. Ltd.
6. By paying a higher rate of Rs. 90 'per' share Dadri Marketing Co. Ltd. was benefited to the extent of Rs. 2,43,000 in this deal to the detriment of the shareholders of D.D.C. Ltd.
7. M. L. Raizada and J. Dalmia, Directors of D.D.C. Ltd. were also the Directors of S.S.B. Mills Ltd.
8. The price of Rs. 290 at which D.D.C. Ltd. was made to purchase these shares included the premium paid for the Managing Agency rights and R. Dalmia was aware of this position.
9. Sir Shapurji Broacha Mills Ltd., paid Rs. 1,02,20,000 by way of compensation to its Selling and Managing Agents.
10. S.S.B. Mills Ltd. went into voluntary liquidation on 31-12-1951.
11. D.D.C. Ltd. received Rs. 4,92,750 as follows by way of return of capital in respect of 2,700 Conversion shares held by it from the liquidators of S.S.B. Mills Ltd. between December 1952 to July 1953:—
 - 31-12-1952. Two hundies for Rs. 1,68,750 and Rs. 2,70,000 on D.C.P.M. The amount of Rs. 4,38,750 was debited to the account of D.C.P.M. in the books of D.D.C. Ltd.
 - 31-7-1953. A demand Draft for Rs. 54,000 from South Asia Industries Ltd. This Demand Draft was sent to Bharat Union Agencies Ltd. for collection. The amount of Rs. 54,000 was debited to the B.U.A. account in the books of D.D.C. Ltd.

12. Dalmia Dadri Cement Ltd., therefore, suffered a loss of Rs. 2,90,250 (Rs. 7,83,000 minus Rs. 4,92,750) on this deal.
13. This loss was transferred to Dadri Marketing Co. Ltd. on 31-7-1953.
14. On Rs. 7,83,000 invested in the shares of S.S.B. Mills Ltd. for 41 months (from 31-1-1949 to 31-12-1952) D.D.C. Ltd. received only Rs. 54,000 by way of dividend which works out to 1.9%.

Particulars re: D. J. Aviation Ltd.

1. It was a D. J. Group concern.
2. In or about 31st July, 1950, D.D.C. purchased 30,000 shares of D. J. Aviation from D.C.P.M. at Rs. 10 per share. The purchase price of Rs. 3 lacs was credited to the account of Dadri Marketing Ltd. the selling agents of D.D.C. Ltd. instead of being paid to D.C.P.M.
3. On 31-7-1950, a sum of Rs. 10,90,875 was due by Dadri Marketing to D.D.C. Ltd. This indebtedness was reduced to the extent of Rs. 3 lacs by the purchase of the shares of D. J. Aviation. On the same day the shares of Edward Keventer(s) of the value of Rs. 12,000 were also purchased. This brought down the indebtedness by Rs. 4,22,000 to Rs. 6,68,875.
4. On or about 30th April, 1952, D.D.C. Ltd. further purchased 2,13,500 ordinary shares of D. J. Aviation Ltd. from Rashtriya Agencies Ltd. at Rs. 10 per share. Instead of making the payment of Rs. 21,35,000 to Rashtriya Agencies Ltd. the amount of Rs. 21,35,000 was credited to the account of D.C.P.M. in the books of D.D.C. Ltd. D.C.P.M. at that time was acting as the selling agents of D.D.C. Ltd. and a sum of Rs. 19,60,291 was due by D.C.P.M. to D.D.C. Ltd.
5. The paid-up capital of D. J. Aviation was Rs. 1 crore but it was represented mostly by the advances to D.C.P.M. and investments in the shares of sister companies.
6. Its income during the years ending 31st July 1949, 1950 and 1951 was as follows:—
 - (a) 31st July, 1949

By way of interest	Rs. 1,45,332-10-0
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 - (b) 31st July, 1950

By way of interest	Rs. 1,97,516-1-0
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 - (c) 31st July, 1951

By way of interest and dividend	Rs. 1,62,366-11-3
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7. D. J. Aviation Ltd. did no air business.
8. It had no future prospects.
9. D. J. Aviation had not declared any dividend on its ordinary shares from the date of its incorporation.
10. Shital Prasad Jain, a Director of D.D.C. Ltd. was closely connected with D. J. Aviation and was aware of its financial position and the fact that it had no future prospects.

11. Manmohan Lal Raizada was a common Director of D.D.C. Ltd. and Dalmia Jain Aviation.

12. 2,43,500 shares of D. J. Aviation held by D.D.C. Ltd. were sold as follows:—

- (a) On 28-2-1953, 1,23,500 shares to Bharat Union Agencies Ltd. The Payment of Rs. 12,35,000 was made by B.U.A. Ltd. by a *hundi* in favour of D.D.C. Ltd. on the Dadri Marketing Ltd. The amount of Rs. 12,35,000 was, therefore, debited to the account of Dadri Marketing Ltd. in the books of D.D.C. Ltd. It was out of this amount and other debits of Dadri Marketing Ltd. that the payment of Rs. 18 lacs was made to Allenberry on 30th April, 1953.
- (b) On 30th November, 1953, D.D.C. Ltd. sold 1,20,000 shares to Govan Brothers Ltd. for a sum of Rs. 12 lacs. The amount of Rs. 12 lacs was debited to the account of Govan Brothers Ltd. in the books of D.D.C. Ltd. This amount of Rs. 12 lacs was later advanced to Jaipur Udyog Ltd.

13. On the amount of Rs. 24,35,000 invested in the shares of D. J. Aviation no dividend was received, thus R. Dalmia had the use of this amount free of interest.

14. The shares of D. J. Aviation were not quoted on any stock exchange, and the company had no reserves.

Particulars re: D.C.P.M.

1. It was a R. Dalmia concern at all relevant times.
2. 830 Preference shares of D.C.P.M. were purchased prior to January 1948 at Rs. 150 per share for Rs. 1,24,500.
3. On or about 31st October, 1950, 5,282 Preference shares of D.C.P.M. were purchased by D.D.C. Ltd. from Govan Brothers Ltd. at Rs. 56.77 per share. The purchase price of Rs. 2,99,850 was credited to the Dadri Marketing Ltd. which company was acting as the selling agents of D.D.C. Ltd.
4. This lot of 5,282 shares was sold as follows:—
 - (i) On 28th February 1951, 4,600 Preference shares were sold at Rs. 50 per share through D.C.P.M. The sale considerations of Rs. 2,30,000 was debited to Dadri Marketing Ltd. D.D.C. suffered a loss of Rs. 31,134 on this deal.
 - (ii) The balance of 682 shares was sold on or about 31st December 1951 through D.C.P.M. and the sale consideration of Rs. 38,716 was debited to the account of D.C.P.M.
5. On or about 30th September, 1952, 6,400 Preference shares of D.C.P.M. were purchased by D.D.C. Ltd., from V. V. Ltd., at Rs. 94 per share.
6. Three months later, the same block of shares was sold to Rashtriya Agencies Ltd. at Rs. 100 per share and thus a profit of Rs. 38,400 was shown in the books of D.D.C. Ltd. The purchase price of Rs. 6,01,600 was credited to the account of V. V. Ltd. and the sale consideration of 6,40,000 was debited to the account of Rashtriya Agencies Ltd. in the books

of D.D.C. Ltd. The amount payable by D.D.C. Ltd., to V. V. Ltd., was set off against the amount receivable from Rashtriya Agencies Ltd.

7. Shital Prasad Jain was at that time a common Director of Govan Brothers Ltd., and D.D.C. Ltd. He was also the principal executive of D.C.P.M.

8. R. Dalmia was the sole beneficiary of V. V. Ltd., and a common Director of V. V. Ltd., and D.D.C. Ltd.

9. The Financial position of D.C.P.M. did not warrant the investment of such large amounts in its shares by D.D.C. Ltd., a public limited company

10. The dividend on ordinary shares had not been declared for many years. Its shares were not quoted on the stock exchange.

11. Dividend on Preference shares of D.C.P.M. were in arrears for 8 years.

12. On or about 10th April, 1952, D.C.P.M. was converted into a private limited company.

Particulars re: Jaipur Udyog Ltd.

1. It was a private limited company under the control of D. J. Group.

2. In or about November, 1951, D.D.C. Ltd. purchased 60,000 shares of Jaipur Udyog Ltd. of Rs. 10 per share from the following:—

	Rs.
Jaipur Traders Ltd.	9,900
Jaipur Agencies Ltd.	100
Premier Transport Corpn. Ltd.	50,000
	<hr/>
	60,000

The purchase price of Rs. 6 lacs instead of being paid to the respective companies, was credited to the account of D.C.P.M. Ltd. in the books of D.D.C. Ltd.

3. On or about 30th November, 1953, 50,000 shares of Jaipur Udyog Ltd. were further purchased by D.D.C. Ltd. at Rs. 10 per share. The purchase price of Rs. 5 lacs was credited to the account of Asia Udyog Ltd.

4. Again on 30th June, 1955, 2,50,000 ordinary shares of Jaipur Udyog Ltd. were further purchased by D.D.C. Ltd. from South Asia Industries Ltd. for a sum of Rs. 25 lacs.

The amount of Rs. 25 lacs payable to South Asia Industries Ltd. was credited to clear the amount of Rs. 25 lacs due from Rajasthan Udyog Ltd.

5. Out of the lot of 3,60,000 shares of Jaipur Udyog Limited, on or about 31st August, 1955, D.C.P.M. sold 3 lacs ordinary shares of Jaipur Udyog Limited for a sum of Rs. 30 lacs. The amount of Rs. 30 lakhs was debited to the account of Asia Udyog Limited in the books of D.D.C. Ltd.

6. In 1955, Asia Udyog Limited was acting as the selling agents of D.D.C. Limited. On or about 14th October, 1955, D.D.C. Ltd. purchased a further 50,000 shares for Rs. 5,25,000 from South Asia Industries Limited. The amount was credited to the South Asia Industries Ltd. Towards the payment of Rs. 5,25,000 a *hundi* was drawn by D.D.C. on Asia

Udyog Limited in favour of South Asia Industries Limited. The amount of the *hundi* was credited in the books of D.D.C. Limited.

7. D. A. Patel and S. N. Dudani were common directors of Jaipur Udyog Limited and D.D.C. Limited. S. N. Dudani was Secretary of Asia Udyog Limited.

8. In December 1955 D.D.C. Ltd. received Rs. 82,500 by way of dividend on 1,10,000 shares of Jaipur Udyog Ltd. held by it.

Particulars re: Bharat Insurance Company Ltd.

1. Bharat Insurance Ltd., was a company under the control of the D. J. Group.

2. Dalmia Dadri Cement Ltd., purchased the following shares of Bharat Insurance Co. Ltd.

Date of purchase	From Whom purchased	No. of shares	Rate Rs.	Amount Rs.
1-1-48		520	125	65,000
31-10-48	(Rajputana Inv. Ltd.)	135	125	16,875*
16-2-50	Do.	200	30	6,000*
		855		87,875

*Amount credited to Rajputana Investment Ltd.

3. Dalmia Dadri Cement Ltd. sold the above shares as follows:—

Date of Sale	To whom sold	No. of shares	Rate Rs.	Amount Rs.
31-10-1948	(Rajputana Inv. Ltd.)	245	125	30,625-0-0*
17-10-1951	(H. S. Mehta & Co) Share Broker	610	29-14-0	18,223-12-0
		855		48,848-12-0

*Amount debited to Rajputana Investment Ltd.

4. Dalmia Dadri Cement Ltd. made a loss of Rs. 39,026-4-0- on this deal.

5. Rs. 11,039-15-0 were received by way of dividends by D.D.C. Ltd.

6. At that time R. Dalmia was the Chairman of Bharat Insurance Company Ltd.

Particulars re: Dalmia Jain Airways Ltd.

1. In February, 1952, Dalmia Dadri Cement Ltd., purchased 2,80,000 shares of D. J. Airways Ltd., a D. J. Group Concern, @Rs. 2-4-0 per share and sold the same lot to D.C.P.M. after six @Rs. 2-4-6 per share and thus made a profit of Rs. 8,750.

2. Shital Prasad Jain was a common Director, viz., Director of D.J.A. and D.D.C. Ltd.

3. D. J. Airways had never declared any dividend from the date of its incorporation.

4. The financial position of D. J. Airways did not justify investment in its shares by D.D.C. Ltd.

Further Particulars

1. D.D.C. Ltd. invested its funds in the shares of Edward Keveiter(s) Ltd., Kharakhari Coal Co. Ltd., Bharat Fire & Government Insurance Ltd., Dadri Marketing Ltd., Maheshpur Collieries Ltd., Pepsu Trading Co. Ltd., which at that time were under the control of R. Dalmia.

2. No dividend was received by Dalmia Dadri Cement Ltd. on the above shares.

3. The following table shows the amount invested by Dalmia Dadri Cement in the shares of sister companies and the percentage on the paid-up Capital, and the actual dividend income earned during the years 1948—1955:

For the year ending	Amount invested in shares of the sister companies	Percentage to the paid-up capital	Dividend income
31st December, 1948	6,86,150	28.5%	Nil
31st December, 1949	9,29,150	38.2%	37,249
31st December, 1950	15,69,500	65.2%	1,830
31st December, 1951	18,12,400	75.2%	28,830
31st December, 1952	33,86,650	140.7%	Nil
31st December, 1953	11,00,000	45.7%	Nil
31st December, 1954	11,00,000	45.7%	Nil
31st December, 1955	12,25,000	50.8%	82,500
TOTAL			1,50,409

4. The net loss on the resale of shares against to Rs. 72,910-4-0 as follows:—

Year ending 31st December 1950

	Rs.	
On Rohtas Industries Shares	32,400	
On Bharat Ayurvedic Pharmacy Ltd. shares	17,500	49,900

Year ending 31st December 1951

On Bharat Ins. Co. Ltd. shares	39,026-4-0	
On D.C.P.M. shares	31,134-0-0	70,160-4-0
TOTAL LOSS		120,060-4-0

Less profit made in the year ending 31-12-52

On D.C.P.M. Shares	38,400	
On D. J. Airways Shares	8,750	47,150
Net Loss to D.D.C. Ltd.		72,910-4-0

5. Loss by way of interests to D.D.C. Ltd. amounts to Rs. 3,78,897 as set out below:—

The amount invested in shares of joint stock

	Rs.
Companies by D. D. C. Ltd. during 1948 to 1955 @ 4½%	
would have given interest of	5,29,306
Less Actual income by way of dividend	1,50,409
	<hr/>
	3,78,897

Loss by way of interest to D. D. C. Ltd.

Persons Responsible:

(a) Primarily the Directors of D.D.C. Ltd. viz.,

M. L. Raizada

N. C. Roy

J. Dalmia

M. P. Modi

Shital Prasad Jain

V. S. Chordia

J. M. Gupta

R. Dalmia

S. K. Sanghi

S. N. Dudani

R. P. Gurha

D. A. Patel

R. D. Dalmia

M. P. Sharma

(b) Except R. Dalmia and J. Dalmia and Shital Prasad Jain, the others were either dummies or subservient to R. Dalmia. The person really responsible was R. Dalmia.



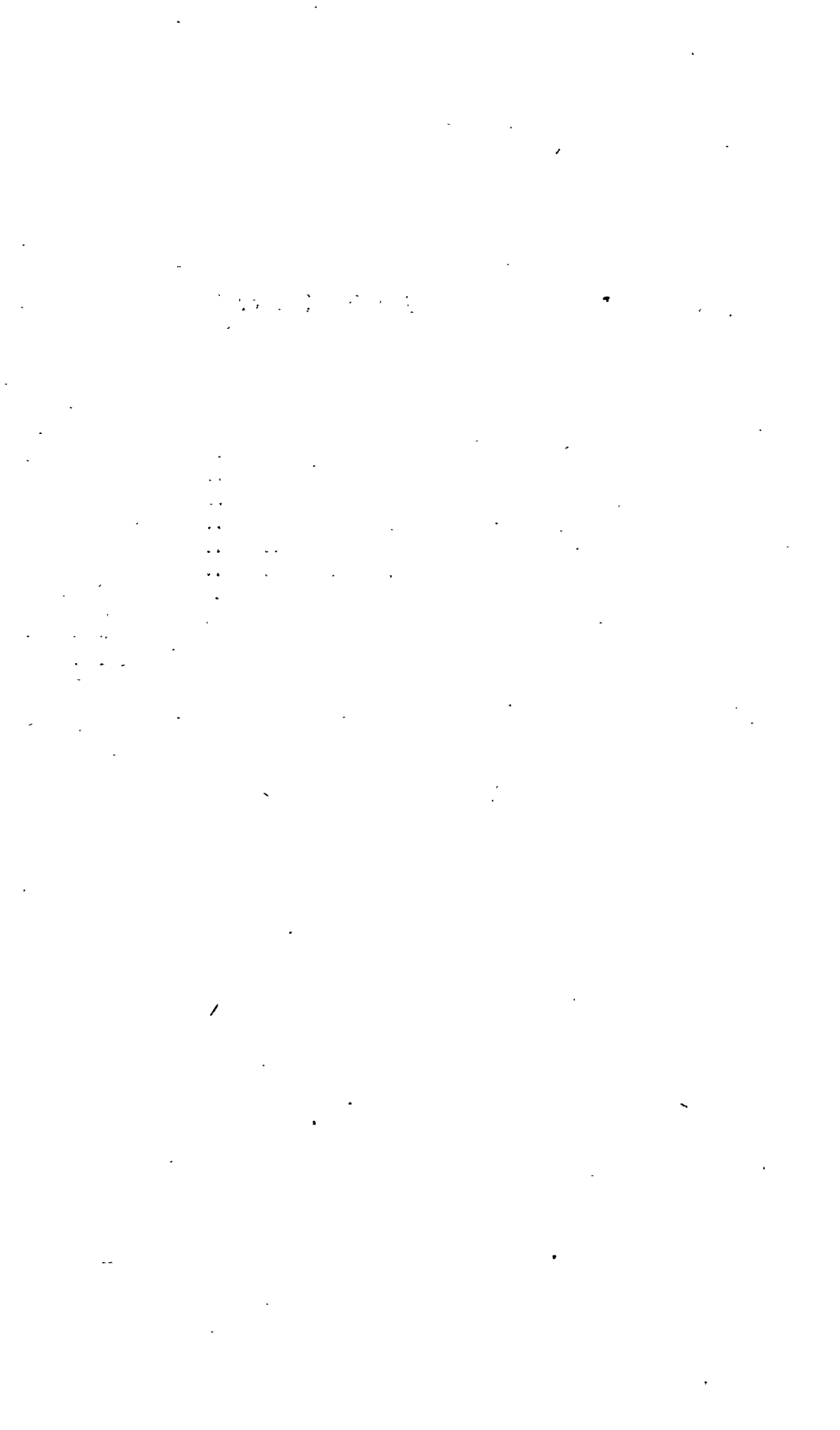
CHAPTER XI

INTER-COMPANY INVESTMENTS

Dalmia Dadri Cement Limited invested the following amounts in the shares of companies that were under the control of R. Dalmia and in which R. Dalmia was mainly interested at that time for the use and benefit of his concerns.

For the year ending					Value of investment held
31st December, 1948	..	..	..	..	6,86,150
31st December, 1949	..	..	..	..	9,29,150
31st December, 1950	..	..	..	..	15,69,500
31st December, 1951	..	..	..	..	18,12,400
31st December, 1952	..	..	..	..	33,86,650
31st December, 1953	..	..	..	..	11,00,000
31st December, 1954	..	..	..	..	11,00,000
31st December, 1955	..	..	..	..	12,25,000

This is another instance of the pattern followed by R. Dalmia of using the funds of a public limited company for retaining the control of his private limited and other companies in which he was mainly interested.



CHAPTER XII

INTER-COMPANY TRANSFERS

D.D.C. Limited, granted loans to the following two private limited companies in which R. Dalmia was substantially interested at that time, for the use and benefit of his concerns.

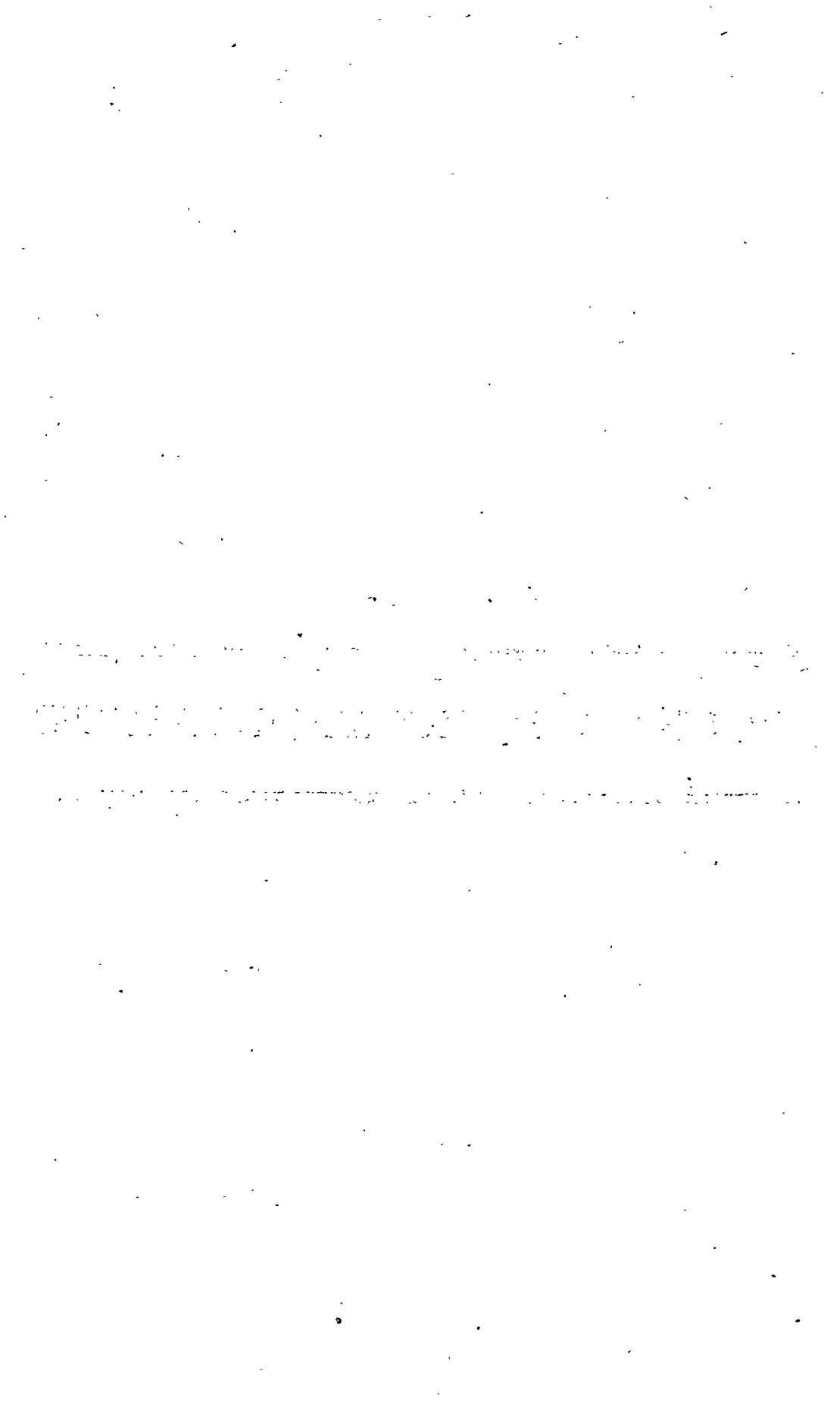
- (a) a loan of Rs. 18,00,000 to Allenberry and Co. Ltd., a private limited company of the D. J. Group in April 1953.
- (b) a loan of Rs. 12,00,000 to Jaipur Udyog Ltd. a private company under the control of the D. J. Group on the 14th December, 1953. This was in contravention of Section 36-D of the Indian Companies Act, 1913.
- (c) a loan of Rs. 25,00,000 to Rajasthan Udyog limited, a private limited company under the control of the D. J. Group on 19th November, 1954.

We have already dealt with these earlier. As we are asked under our terms of reference to deal with the inter-company transfers we list them here.

(VIVIAN BOSE)	(V. R. SEN)	(N. R. MODY)	(S. C. CHAUDHURI)
New Delhi	New Delhi	Bombay	New Delhi
15-6-62	15-6-62	16-6-62	15-6-62



INQUIRY AND RECOMMENDATIONS



INQUIRY AND RECOMMENDATIONS

The Commission of Inquiry appointed under S.R.O. 2993 of 11th December, 1956, submitted its Report on the Investigation part to the Central Government on 18th June, 1962, covering items (1) to (9) and so much of item (10) of its Terms of Reference as related to any irregularities, frauds or breaches of trusts or action in disregard of honest commercial practices contraventions of any law (except contraventions in respect of which criminal proceedings were pending in a court of law) in respect of the companies and firms whose affairs were investigated by the Commission which came to the knowledge of the Commission. It was permitted under S.O. 1889 of 15th June, 1962, to report separately on the matters covered under item (10) as related to the action which, in the opinion of the Commission, should be taken to act as a preventive in future cases and the matters specified in paragraph (11). The said items, after eliminating the portion deleted by the Judgement of the Hon'ble Supreme Court dated 28th March, 1958, read as under :

“(10)..... and the action which in the opinion of the Commission should be taken to act as a preventive in future cases;

(11) the measures which in the opinion of the Commission are necessary in order to ensure in the future the due and proper administration of the funds and assets of companies and firms in the interest of the investing public.”

The Commission hereby submits its Report.

Objects Clause of the Memorandum of Association

2. It is a matter of common knowledge that it is customary to make the objects and purposes of a company's memorandum as wide as possible in order to obviate applications to the Court when some new venture is contemplated. No objections can normally be taken to make the objects as wide in scope as possible; but at the same time, this practice holds out ample opportunities for participating in activities which are neither the main activities nor are ancillary thereto, but are very remote in character, and far removed from the principal and ancillary objects for which a company has been incorporated.

3. In case of a public company, which was before the Commission, it was incorporated primarily for the purpose of carrying on an Airline business, although it transpired that there was never any serious intention to do such business. The reason for the floating of this company in that form was that, at the particular time, airline business was very much in the public eye and there was a big demand for shares in such companies. It is significant that though the ostensible main business was given prominence in the Memorandum, the activities which the company intended to pursue, viz., business in all types of surplus motor vehicles and spare parts left by the American fighting forces in India at the conclusion of the war, were mentioned in an omnibus clause that spoke of humbler kinds of conveyance like 'vehicles of all kinds' along with 'cycles, carriages and perambulators'. No one could have imagined by a simple statement in the Memorandum that the main business was that of dealing in motor vehicles and spare parts involving an outlay of almost Rupees 6 Crores, and the principal business was merely to be a small side show with an investment of about Rupees 22 lakhs only. Although in the prospectus for the issue of capital amounting to Rupees 320 lakhs it was

disclosed that the company would be dealing in surplus vehicles and spare parts, "applications with full amount for about three crores" had already been received, according to a statement in the Prospectus.

4. Several Committees have so far approached, from different points of view, the subject of the contents of the Memorandum of Association, particularly the objects of a company stated therein. The Expert Committee on Company Law, generally known as the Bhabha Committee, considered the question of imposing certain restrictions on the wide power taken by companies in their Memoranda to carry on every conceivable business, and though the Committee fully appreciated the necessity of restrictions, it was unable to evolve a practical method to distinguish between the two types of businesses and to recommend the basis of an effective legal provision. The Committee however preferred to rely on the responsible judgement of the management and the periodical vigilance of the shareholders. However, the 'vigilance' of the shareholders would ordinarily come into the picture when the company seeks to amend its objects clause, and rarely in cases is of utilizing wide powers taken in the Memorandum to participate in some other activity.

5. In recent times, there have been instances where companies have gone in for diversification and diversified their activities into lines other than the principal object or objects ancillary thereto. We are not necessarily condemning diversification as such, and feel that this tendency may largely be due to the system of inter-corporate taxation of dividends. In countries where inter-corporate taxation does not exist, the tendency for a group is to form separate subsidiary companies under the main holding company; but this would prove to be far too expensive from the tax point of view in this country owing to dividends being taxed at each stage of its corporate travel.

6. Nevertheless, we think that the shareholders should have some say in the matter, and it is, therefore, recommended that—

- (i) The Act should be suitably amended to provide that every company shall clearly state its purposes and objects under two separate categories, viz.,
 - (a) the principal and ancillary objects which the company intends at the time of its incorporation to pursue; and
 - (b) all other objects which are separate from the principal and ancillary ones mentioned in item (a) above.
- (ii) A provision should be made in the Act to the effect that a company shall not engage itself in any activities coming within the scope of Clause (b) unless such activities are sanctioned by a special resolution of the company in general meeting.

Underwriting Commission

7. The word "underwriting" means that a person agrees to take up shares specified in the underwriting agreement, if the public or other persons fail to subscribe for them. Consideration for this contract takes the form of payment of commission whether or not the underwriters are called upon to take up any shares. Underwriters are thus paid for the risks they expose themselves to in the placing of shares before the public.

8. Section 76 of the Companies Act, 1956, empowers a company to pay commission on certain conditions to any person in consideration of :

- (a) his subscribing or agreeing to subscribe; or
- (b) his procuring or agreeing to procure subscriptions for any shares or debentures of the company. One of the conditions for such

payment is that the amount or the percentage of the commission paid or agreed to be paid is disclosed, together with the names of the underwriters, in the prospectus or in the statement in lieu of prospectus, as the case may be.

9. An instance which came to the notice of the Commission in the course of its investigation was that of a company which acted as underwriters of a public company and the directors of that public company had a major interest in the company which acted as underwriters for the issue of capital amounting to Rupees 310 lakhs. According to the disclosure made by the Directors themselves in the Prospectus, "applications with full amount for about three crores" had already been received. The persons in control thus made to themselves a gift of about Rupees 8 lakhs in the shape of underwriting commission at the cost of the investing public although the underwriter was not exposed to any risk in this instance.

10. It is, therefore, recommended that—

- (i) The Commission shall not be paid to any persons on such shares or debentures as are actually subscribed for at the time of the filing of the company's Prospectus or Statement in lieu of Prospectus.
- (ii) A copy of the contract or agreement for the payment of the commission shall be delivered to the Registrar simultaneously with the filing of the Prospectus or the Statement in lieu of Prospectus.

Issue and allotment of shares in the names of fictitious or non-existing persons

11. An instance came to the notice of the Commission where shares of a public company to the extent of Rupees 16 lakhs were applied for on behalf of 114 non-existing shareholders. Although it cannot be stated that this practice is of widespread usage, still any instance of such practice should be dealt with severely. At one time the Commission thought that it might be possible to obtain application forms to be attested by a Magistrate or a Justice of the Peace or a Gazetted Officer of Government; but it was felt that this practice would result in inconvenience to genuine applicants and bring out, particularly within the confines of a small community, the private affairs of individuals. However, in order to eradicate such a practice, even though fortunately not widespread, it is recommended that—

- (i) A provision should be made in the Companies Act, whereby any person who, either makes an application to the company or otherwise induces the company to allot or transfer its shares in the names of fictitious or, non-existent persons, shall be punishable with imprisonment which may extend to five years.
- (ii) The penal provision suggested in item (i) above shall be inserted at a prominent place—
 - (a) in every prospectus issued by a company; and
 - (b) in every form of application for shares that is issued to any person.

filled in the transfer form. The advantage in giving such a blank deed is that the buyer will be at liberty either to sell it again without filling his name and signature to a subsequent buyer. In the latter case he can avoid the payment for the transfer stamp and new deed to the buyer. The process of purchase and sale can be repeated any number of times with the blank deed and ultimately when it reaches the hands of one who wants to retain the shares, he can fill in his name and date and get it registered in the company's books. For this ultimate transfer and registration, the first seller will be treated as the transferor, even if it happens years after his death. On such registration the last buyer will be recognised as a shareholder by the company and the other intervening parties being not such shareholders but only having had an equitable right in themselves, if they had so desired, to be registered as shareholders of the company."

It is the most common method adopted for share transfers in speculative dealings in this country, and all Stock Exchanges in this country recognise 'blank transfer' as a valid delivery.

13. This widespread practice is no doubt based upon a variety of legitimate reasons and necessary business purposes. In the circumstances of this country, however, it has increasingly lent itself to certain abuses, the most important of which are :

- (a) concealment of the identity of the real beneficial owners behind their nominees; and
- (b) evasion of tax by suppression of 'secret' profits invested in holdings on blank transfers.

14. In the course of this inquiry, instances have come to the notice of the Commission where with a view to achieve one or other object, individuals or limited companies resorted to the practice of holding shares on 'blank transfers' registered in third party's names. In certain cases this practice was adopted with a view to—

- (a) facilitate window-dressing of Balance Sheets of companies by reshuffling of shares held on 'blank transfers' between associated companies with the object of substituting inter-company loans and advances at the time of the closing of the accounts by investments; and
- (b) bring into existence fictitious or ante-dated transactions in the books of companies in order to create fictitious losses in investments for the purpose of reducing the taxable profits.

15. As we have stated earlier, various Committees have considered this question, and some have gone to the extent of even recommending total abolition of the 'blank transfer' system. The Commission, however, feels on a very careful consideration of this question that some remedial measures are necessary to meet the evils flowing out of the indiscriminate practice of blank transfers in this country. The Company Law Committee presided over by the Rt. Hon. Lord Jenkins recently submitted its report in the United Kingdom and have recommended a procedure to enforce disclosure of the beneficial ownership of holdings. The Commission would favour a new provision to secure such a disclosure.

16. It is, therefore, recommended as under :—

- (i) A new provision should be made in the Companies Act, 1956, to adapt Section 308 read with Section 307 so as to—
 - (a) require beneficial owners of 5% or more of the equity capital of a company or shares having the right to vote at general meetings, to notify to the company the extent of their holdings of all such shares; and
 - (b) require such persons, so long, as they remain beneficial owners of 5% or more of such shares, to notify to the company details of all transactions by them or on their behalf in such shares, within 15 days of such transactions coming to their knowledge.
- (ii) The beneficial interests to be taken into account for the purposes of disclosure under the aforesaid new provisions should be confined to those shares which are held by a person or in trust for him, or of which he has any right to become the holder, whether on payment or not.
- (iii) The provision should not require a director who has disclosed his holdings under Section 308 to make any further disclosure in relation to that holding.
- (iv) Provision for fine or imprisonment should be made [on the same line as in Section 308(3) of the Companies Act, 1956] for wilful failure of a person to notify his beneficial interests in shares to the company as envisaged by the new provision suggested in item (i) above.
- (v) The identity of the shareholders notifying the beneficial interest, the extent of their individual holdings of, and the transactions in, the types of shares referred to in item (i) above and the description and amount of such shares should be recorded by the company in a new register within 7 working days of notification to it.
- (vi) The company should be required to—
 - (a) keep open the new register for inspection by the same persons and on the same terms as its register of members; and
 - (b) to make available to the public copies of the new register on the same terms as copies of the register of members.
- (vii) A return of all such disclosure of beneficial interests in holdings of and transactions in the shares, as recorded by the company, should be filed with the Registrar of Companies along with its Annual Return under Section 159 of the Companies Act, 1956.
- (viii) Provision for penalty should also be made in respect of the company's default in complying with any of the requirements of the provisions suggested in items (v), (vi) and (vii) above on the lines of Section 307(8).
- (ix) The above requirements should not apply to holdings in a private company as defined in the Companies Act or should they affect the operation of Section 153.

17. The present law no doubt provides for investigation of real ownership of shares in certain circumstances, e.g., Sections 247 and 248 of the Companies Act; but these Sections are somewhat limited in character.

18. It is, therefore, recommended that—

- (i) Section 247 of the Companies Act, 1956, should be extended to empower the Central Government to appoint an Inspector to investigate the ownership of the shares of a company when there are circumstances suggesting to the Central Government that there may have been deliberate disregard of provisions for disclosure of ownership as suggested in item (i) of paragraph 16 above.
- (ii) Section 137 of the Income-tax Act, 1961, should be suitably amended to permit disclosure of such information as may be required by—
 - (a) the concerned officer or Department of the Central Government for the purpose of investigation into the ownership of shares of a company under Sections 247 and 248 of the Companies' Act, 1956; or
 - (b) by a Court in connection with the prosecution of any person arising out of any proceeding instituted under Section 621 of the Companies Act, 1956; read with the above proposed provision for fine or imprisonment for deliberate non-compliance of disclosure of ownership as suggested in (i) of paragraph (16) above.

19. Restrictions should be imposed relating to the period of currency of the blank transfers by making suitable statutory provisions with a view to permit shares being held on blank transfers only for a limited period. In this connection, we make the following broad recommendation, namely :—

- (i) to prescribe a form for execution of the instrument of transfer to be delivered to the company for having the transfer of shares registered;
- (ii) the transfer forms should be in a standardised form as now obtaining in the case of listed securities in some of the Stock Exchanges in the country;
- (iii) the application for registration of a transfer should be made to a company by either the transferor or the transferee within a period of 6 months from the date of issue of the transfer form as stamped on it in the case of listed securities and two months in the case of non-listed securities;
- (iv) the aforesaid restrictions relating to the period of currency of the blank transfers, as mentioned above, should not apply in cases where the shares are held by a company within the ambit of Section 49 or where they are held in a fiduciary capacity or as security by a financial institution, provided that in the last case the shares should be in the name of the borrower with a blank transfer executed in favour of the institution as security for the advance.
- (v) We strongly recommend reduction in the rate of stamp duty chargeable on the transfer of shares which, in our opinion, would operate as an incentive against keeping the transfers blank. We feel that the loss in revenue on this account may be more than made up by the volume of transfers as well as by the possibility of reducing evasion in the matter of direct taxes.

Dummy Directors

20. Various cases have come to the notice of the Commission in the course of its investigation where dummy directors were put on the boards of

large companies. These directors were persons occupying subservient and minor positions in the various companies in the group. The extent of this can be noticed when stenotypists, typists and personal secretaries were made directors of large companies. The Commission is not canvassing a case against the appointment of directors who may be employees of companies, or for a prohibition against such practice. It is concerned only with persons in subservient positions, being placed on the board of directors, merely to carry out the dictates and wishes of others having the controlling interest and remaining in the background, particularly when malpractices were involved. The concept of 'deemed' directors has already been introduced in the Companies' Act, though in a few sections only, by using the following expression :—

“persons in accordance with whose directions or instructions the board of directors of a company is accustomed to act.”

This expression has been used in the Act mainly with a view to impose effective restrictions on some special activities of directors and managing agents as in Sections 295, 369, 370 etc. The expression has also been introduced in Sections 162 and 538 with the object of casting on persons, who fall within the description, the responsibilities attached to directors under these provisions. The Act has rightly cast these responsibilities on persons who, though exercising full control over the affairs of a company, but by concealing their identity behind their dummies, otherwise escape the responsibilities attached to the office of a director. Time and again we have seen how the master-minds behind the malpractices kept in the background although they had planned and directed the strategy, but left the implementation only to the subordinates, who were thereby exposed to all the risks inherent in the adoption of such malpractices.

21. The expression used in the existing provisions of the Act to cover 'deemed' directors appears, in our opinion, to have a limited scope, because a person will fall within this description only if the 'board of directors', which under Section 252(3) means the directors collectively, is accustomed to act in accordance with the directions. Thus, if a person acts through the majority of nominee directors on the board, but not all of them are his nominees, it would appear that he may escape the mischief of the said provisions. Furthermore, the question as to whether a person is acting in accordance with the directions or instructions of another or not, being a question of fact, it may not often be easy to prove this in respect of either all or even the majority of the directors on the board.

22. It may be mentioned in this connection that the expression used in the different sections of the Companies' Act to cover 'deemed' directors appears to have been adopted from the English Act, with the modification that it refers to the "board of directors" instead of "directors" as referred to in the English Act. The Bhabha Committee of 1952 suggested the use of the word "directors" only and the reference to the word "directors" instead of "board of directors" in the description may be preferable, if the enlargement of the penal provisions of the Act to in the 'deemed' directors is to be effective.

23. The Jenkins Committee in suggesting that every company should have at least two directors, considered this problem, and the following is an extract from paragraph 25 of their Report :—

“Employees are sometimes now appointed as second members and we recognise that, if our proposal is adopted, some employees may be pressed in future to accept appointment as second directors

without being informed of the responsibilities which this involves. This risk should, in our view, be accepted : the remedy is a wider realisation of the fact that the office of director carries responsibilities as well as prestige. To reduce the difficulties of enforcement we suggest that the Act should provide that the first two subscribers to the memorandum of association shall be deemed to be directors unless and until the company notifies the Registrar of the names of at least two directors."

24. However, some kind of legislative measure may be necessary in this country and it is therefore recommended that—

the definition of "officer" contained in Section 2(30) should be expanded by the adding of a sub-clause (d) to include (as an officer) a person in accordance with those directions or instructions the directors of a company or any of them are accustomed to act.

25. We now take up the question of absentee directors. It has also come to the notice of the Commission that certain directors resorted to the device of absenting themselves from board meetings at which questionable decisions had to be undertaken. Their defence was that since they did not attend the meeting, they were not responsible for the malpractices or for the decisions arrived at such meetings. The present provisions of the Companies' Act regarding vacation of office due to absence from meetings are covered under Section 283 (1) (g), which lays down that a director will vacate his office if he absents himself for three consecutive meetings of the board of directors, or from all meetings of the board for a continuous period of three months whichever is longer, *without obtaining leave of absence from the Board*. It is, therefore, possible to have leave of absence from board meetings for periods longer than that contemplated by the Act. At the same time the Commission is conscious of the fact that a director may be absent due to genuine reasons, such as, prolonged illness, or being out of country on business of the company or on leave, etc., and therefore legislation to curb absenteeism may prove to be impracticable in genuine cases and cause hardships. The Commission, therefore, does not recommend any legislative measures, and suggests leaving the matter to the force of public opinion and the opinion of the shareholders, which should prevail. One suggestion made to us was that the Report of the board of Directors should contain a statement of the total number of meetings held in the course of year and the number of meetings attended by director to be mentioned by name. The shareholders will thus be apprised of who was absent and who took interest in the affairs of the company. A director holds a position of trust in a company and to the shareholders who have elected him and we feel that an indication of absenteeism advertised through the director's Report would tend to curb the practice of absenteeism on the part of the directors.

26. Before leaving the subject of directors, we should like to make a reference to another aspect, *viz.*, power to restrain certain persons from managing companies. Under Section 203 of the Companies' Act, the power is somewhat restricted and we would like to expand it on the basis of the Jenkins Committee Report contained in paragraph 80 thereof. The Jenkins Committee has recommended that the Court should have power to disqualify any person :

- (1) who has been convicted of any offence involving fraud or dishonesty whether in connection with a company or not;

- (2) who has been persistently in default in complying with the provisions of the Companies' Act;
- (3) who has been shown to have acted recklessly or incompetently in relation to the affairs of any companies of which he is, or has been, a director or otherwise concerned in the management.

Loans to companies under the same management or to other bodies corporate

27. Legislative provisions have been inserted in the Companies' Act to safeguard in certain circumstances against the practice of giving loans. Section 295 of the Act prohibits a public company or its subsidiary from making any loans to its directors or to relatives of directors, or to firms or private companies in which the directors are interested as partners or members or to public companies which are controlled by the directors of the lending company, without obtaining the previous approval of the Central Government to the making of the loan. Such approval is also required in regard to the giving of any guarantee or the providing of any security by a public company or its subsidiary in connection with a loan made by another person to, or to another person by, the directors and others mentioned above.

28. Section 369 prohibits a public company or its subsidiary from making a loan to its managing agent or its associate or from giving any guarantee or providing any security in connection with a loan made by another person to, or to another person by, the managing agent or its associate.

29. Section 370 lays down that a company shall not lend to another company under the 'same management' unless the transaction has been approved by the lending company by means of a special resolution. Under this Section as amended, the definition of the expression under the 'same management' has been enlarged so as to include in its scope companies which are virtually under common control. A provision has also been made under this Section for the maintenance of a register containing particulars of loans, guarantees etc., which come within the ambit of Section 370, and for keeping open the register for inspection by the members of the company.

30. Section 372, read with Section 370, imposes restrictions on inter-company investments. Numerous cases came to the notice of the Commission where investments were made by a company in another even though such investments were clearly not in the interests of the investing company, but were made from a variety of motives and which have been fully commented on in the first part of our Report. Section 372 now provides that the board of directors of the investing company shall be entitled to invest in the shares of any other body corporate up to 10% of the subscribed capital of such other body corporate; but this overall provision is subject to two provisos, viz.,

- (a) the aggregate of the investments so made by the board in all other bodies corporate shall not exceed 30% of the subscribed capital of the investing company; and
- (b) the aggregate of the investments in all other bodies corporate *in the same group* shall not exceed 20% of the subscribed capital of the investing company.

31. Any investment in excess of the above prescribed limits can only be made after it is sanctioned by a resolution of the investing company in general meeting and further approved by the Central Government. We understand

that in granting its approval, the Central Government apart from other considerations also examines the proposal to ensure that the inter-company investments are not solely prompted by a desire to gain control over the management companies or are for speculative or for *mala fide* purposes.

32. It will be seen from the above that whereas the approval of the Central Government is necessary for transactions coming within the ambit of Sections 295 and 372, no such approval is required for transactions under Section 370. We feel that inter-company loans should rank at par with inter-company investments for the simple reason that results flowing from both types of transactions are practically the same. Accordingly, we should suggest some limit on the amount of loans that can be advanced to companies in the same group, and if the loans were to exceed the specified limits, then it shall be necessary for the lending company to obtain the prior approval of the Central Government. The approval of the Central Government should follow the sanctioning of the loan by the company itself by means of a special resolution.

It is, therefore, recommended that :—

- (i) Section 370 should impose a limit on the amount of loans the lending company can give and for this purpose, we would suggest the limit of 20% of the subscribed capital and free reserves of the lending company in respect of loans to companies within the same group but with the sanction of a resolution of the shareholders;
- (ii) The Section should be further enlarged to include also loans made to companies not in the same group so that the aggregate of all the loans made by the lending company should not exceed 30% of its paid-up capital and free reserves. Such loans also should be the subject of a resolution of the shareholders;
- (iii) Loans in excess of the limits prescribed above should be sanctioned by a special resolution of the shareholders followed by the approval of the Central Government.
- (iv) The same exceptions should apply as at present mentioned in Section 370(2).

Appointment and termination of sole selling agents

33. The appointment of sole selling agents is controlled by Section 294 of the Companies' Act, and the important provisions are that no sole selling agents can be appointed for any area for a term exceeding five years at a time, and the appointment made by the Board of directors of a company is subject to the condition that it shall cease to be valid if it is not approved by the company in the first general meeting held after the date on which the appointment is made. There are other safeguards provided in the same section, in particular by the Companies' (Amendment) Act, 1960, dealing with Managing Agents ceasing to act as such, and thereafter being appointed sole selling agents of the company.

34. The provisions concerning the appointment of managing agents, managing directors, etc., and payment of remuneration and compensation to them on termination of their services have been sufficiently tightened up, but such safeguards have not been introduced as far as the selling agents are concerned. Two instances came to the notice of the Commission where a compan

was appointed selling agents of two Textile Mills, and the selling agents were a company in which members of the group had a large personal stake. On the "termination" of the selling agencies, the Textile Mills were made to pay large amounts of compensation mainly with a view to denude their reserves and with the object of obtaining the compensation free of tax in the hands of the recipient company.

35. We do not wish to suggest that selling agents are not useful, nor that all selling agencies are entered into with a collusive purpose; but we feel that there should be some safeguard in the payment of compensation on the termination of selling agencies similar to those in respect of managing agents and managing directors.

36. It is, therefore, recommended that:—

The Companies' Act should be amended to the effect that—

- (i) a company shall not pay or be liable to pay its sole selling agent any amount by way of compensation for the loss of his office in the following cases:
 - (a) Where the appointment of a sole selling agent ceases to be valid under Section 294 (2A);
 - (b) Where the sole selling agent resigns his office in view of the reconstruction of the company or of its amalgamation with any other body corporate or bodies corporate, and is appointed as sole selling agent of the reconstructed company or the body corporate resulting from the amalgamation;
 - (c) Where the sole selling agent resigns his office, otherwise than on the reconstruction of the company or its amalgamation as aforesaid;
 - (d) Where the sole selling agent has been guilty of fraud or breach of trust in relation to, or of gross negligence in the conduct of his duty as the sole selling agent;
 - (e) Where the sole selling agent has, whether directly or indirectly, himself initiated, or has taken part in bringing about, the termination of the sole selling agency.
- (ii) The compensation which may be paid by a company to the sole selling agent for loss of office shall not exceed the remuneration which he would have earned if he had been in office for the unexpired residue of his term, or for three years, whichever is shorter, actually earned by him during a period of three years immediately. This shall be calculated on the basis of the average remuneration preceding the date of cessation or termination of the office, or when he held the office for a lesser period, during such period.

Power and obligation to acquire shares of dissenting shareholders under a scheme or contract approved by the majority

37. Section 395 of the Companies' Act deals with the power and obligation to acquire shares of minority shareholders dissenting from a scheme or contract approved by the majority. The present provisions which are analogous to those contained in Section 209 of the U.K. Act have already been tightened up to strengthen the position of minority shareholders and to safeguard their interests.

38. The Commission has, however, seen an instance where in a scheme under Section 395 of the Act, shares of a flourishing company worth lakhs of Rupees were acquired by a newly floated private company with insufficient means (paid-up capital Rs. 50,000 only) to acquire the shares. This was done by issuing what were called "deposit receipts", or its own shares as the consideration representing the price of the shares acquired. It was thus a case of a 'take-over' bid where the bidding company, despite non-availability of necessary resources of / or cash, engineered the deal. The Commission further noticed in this case that the transferee company, which had been incorporated only a day before the date of the offer stipulated in its offer that it had adequate resources to arrange funds for cash payment to all the shareholders of the transferor company, if they so desired. This stipulation was obviously made with the ulterior motive of misguiding the shareholders of the transferor company.

39. The Jenkins Committee considered this question at some length and in particular whether a part of the consideration must take the form of cash. However, the Committee has expressed the view that a part of the consideration need not be in cash, and that the whole of the transfer can be by exchange of shares. Paragraph 266 of the Report sums up their views in this connection :—

"In this connection we would refer to the suggestion, which had been made to your predecessor and referred by him to us, that in every take-over offer at least some part of the consideration offered should be required to be in cash. We presume that the dominant motive behind this suggestion was that it would curb take-over bids by companies which might be in a position to issue large quantities of their own shares but could not find the necessary cash. There have no doubt been many cases of amalgamations or take-overs where the bidding company has not had cash available, and where if there had been such a statutory requirement the amalgamation or take-over would not have come about. But we have had no evidence to suggest that such amalgamations or take-overs have on that account been undesirable or disadvantageous to the shareholders of either company and we see no justification for imposing upon all offers to acquire companies or controlling interests therein a requirement that part of the consideration should (or should at the option of the offeree) be in cash. Very many mergers or take-overs have gone through on the basis, acceptable to all parties, that the transaction should be on a share-exchange basis, so that a certain proportion of the equity of the bidding company or new holding company should be available for the shareholders of the company being acquired. We make some recommendations in paragraph 294 below, which should ensure that adequate information is disclosed in a take-over or merger offer to the shareholders. In the light of such disclosure we think that the shareholders should be allowed to judge for themselves whether or not to accept the offer. A requirement that all such offers should be partly in cash would present a number of complications and make many mergers or take-overs impossible or more difficult (and expensive if relief from transfer duty and capital duty under Section 55 of the Finance Act, 1927, which might

otherwise be available were thereby lost) and would not necessarily be for the benefit of any of the shareholders or companies concerned."

40. Although, as stated above, the Jenkins Committee was not in favour of any statutory requirement that all offers should be partly in cash, it has suggested certain measures to ensure that adequate information is disclosed in a take-over offer to the shareholders so that they could be allowed to judge for themselves whether or not to accept the offer. Besides, the usual information relating to terms of the offer, the transferee company should disclose for the aforesaid purposes,

- (a) the particulars of its identity;
- (b) the extent of its interest in the shares of the transferor company,
- (c) the interest of the Directors of the transferor company in the transferee company;
- (d) details of special treatment, if any, to be accorded to the Directors of the transferor company;
- (e) where cash has been offered, a statement, binding on the transferee company, indicating the steps taken to ensure the availability of the necessary cash for payment of consideration for the shares to be acquired.

41. We would, therefore, recommend measures on the lines suggested by the Jenkins Committee in this regard, which may be considered effective against any malpractices in this country, and it is, therefore, recommended that:—

Suitable provisions should be made, in the Companies' Act to the following effect for governing the procedure to be followed and the information to be disclosed in a take-over offer and circular:

- (a) The Central Government should have power to frame rules prescribing the information to be disclosed in every offer of a scheme or contract by a transferee company under Section 395 and in every circular containing such an offer, or recommendation to the members of the transferor company by its Directors to accept such an offer;
- (b) Every offer of a scheme or contract under Section 395 offering cash for the shares to be acquired, should contain a statement, binding on the transferee company, saying that what steps it has taken to ensure that the necessary cash will be available;
- (c) The circulars containing, or recommending acceptance of, the offer of a contract or scheme should be required, before their circulation to be sent for registration to the Registrar of Companies;
- (d) The Registrar should be empowered (subject to appeal to the Court) to refuse to register any such circular which does not set out the information required to be given by the statutory rules suggested in (a) above or does so in a manner likely to create a false impression;

- (e) The issue of such a circular, which has not been accepted for registration, should be made an offence;
- (f) Circulars by directors or the members of the transferor company recommending rejection of the offer of a contract or scheme should not be required to be registered or subject to statutory rules suggested in (a) above.

42. Another point for consideration in connection with take-over bids is the machinery provided in Sections 395 (3) and 395 (4) for completing the compulsory acquisition of shares of the dissenting shareholders. These sub-sections provide only for depositing into a separate bank account, the sums received by the transferor company in consideration of the transfer of the shares of the dissenting shareholders to the transferee company. Such sums are also to be held by the transferee company in trust for the shareholders concerned. However, the existing law neither makes it necessary for the transferor company to make actual payment of such sums to the shareholders unless and until demanded by them nor to send them any intimation of receipt of such sums from the transferee company on their account. The Commission is aware of a somewhat peculiar case of a compulsory acquisition of shares, where, although the scheme of arrangement under Section 153B of the Indian Companies' Act, 1913, was finally implemented, one of the dissenting shareholders expressed his ignorance about it and claims to be a shareholder of the company even now. Apparently, the consideration money receivable by him for his shares has been lying in deposit with the transferor company for about seven years. It may, therefore, be necessary to consider an amendment in the existing provision in Section 395.

43. It is, therefore, recommended that:

Sub-Section (3) of Section 395 should be suitably amended to provide that the transferor company shall within a month from the date of registration of the transferee company as holder of the shares of the dissenting shareholders intimate to them the fact of such registration and the receipt of the amount or other consideration representing the price payable to them by the transferee company and shall forthwith proceed thereafter to pay the money to the dissenting shareholders.

Liquidation

44. A feature noticed by the Commission in the pattern of liquidations was that although the formalities and procedures prescribed by the law were followed in all these liquidations and in the schemes of arrangement proposed by the liquidated companies, courts were not placed in full possession of all the facts and circumstances with the result that at least one scheme where the investing public were largely interested, acted to the detriment of the interests of the investors. There is, however, the possibility of collusion on the part of those who appear before the Court, so that the learned Judge is presented with facts which *ex facie* appear to be fair and proper, and the Court would, therefore, have little or no reason for not sanctioning the scheme.

45. The Central Government have now adequate machinery through the Department of Company Law Administration so that in liquidations of this nature it can handle representations to the Court wherever such schemes of

arrangements under Sections 391 and 394 of the Act come before them. Section 400 of the Act already provides for allowing such opportunities to the Central Government when applications from shareholders for relief in cases of oppression or mismanagement are before the Courts, but the Section comes into play only in cases of "oppression" or "mismanagement" under Sections 397 and 398 respectively and not in the normal course.

46. It is, therefore, recommended that:
Section 400 of the Companies' Act should be suitably amended to provide for issue of notice to, and consideration of the representations, if any, submitted by the Central Government, by the Court before it passes the final orders on an application made to it under Sections 391 to 394.

Recovery of Taxes on Income from Companies in Liquidation

47. Income-tax assessment proceedings in respect of any accounting year, known as the 'previous year', cannot be commenced until the succeeding fiscal year. Even then, the completion of the proceedings may be protracted for various reasons. On the completion of the assessment, a notice of demand is served on the assessee for payment of the demand by a specified date and it is only on the expiry of this period that such a demand can assume the character of a debt and rank for priority under Section 530 of the Companies' Act, preprovided the other conditions laid down therein are satisfied.

48. It is, therefore, possible that the tax on a company's income of one or two years preceding the commencement of liquidation cannot rank as a preferential debt under the provisions of Section 530.

49. Proposals have been made from time to time to secure recovery of tax from companies in liquidation and these were recently examined by the Direct Taxes Administration Inquiry Committee whose suggestions were:

- (i) to modify Section 530 of the Companies' Act to the extent of allowing preferential payment of one year's assessment relating to a period prior to the winding up, notwithstanding that the assessment was actually made subsequent to the winding up;
- (ii) to place specific obligations on the Liquidator to intimate the fact of his appointment to the Income-tax Officer and to set apart assets of the value equal to the tax that may be due or may become due, as may be intimated by the Income-tax Officer.

50. The second suggestion has since been adopted by enacting Section 178 of the Income-tax Act, 1961, but effective results cannot be achieved merely by this provision without some amendment in the Companies' Act.

51. It is, therefore, recommended that:

In addition to the existing provisions of Section 530 of the Companies' Act, this Section should be modified to the extent of allowing preferential payment of tax in respect of the last complete accounting year preceding the liquidation, notwithstanding that the assessment is actually made subsequent to the commencement of liquidation.

52. In making this recommendation what we have in view is the fact that, with the best will in the world, it will not be possible for the Income-tax Department to complete the assessment until the commencement of the winding up. For example, if the company's previous year is the calendar year, then for the year 1961, the assessment year will be 1962-63, namely, the fiscal year commencing on 1st April 1962. Proceedings in respect of that year cannot be commenced by the Income-tax Officer until 1st April 1962, and if the company goes into liquidation, say in February, 1962, priority for tax will be lost due to no default on the part of Income-tax Officer.

53. We have some comments to make with regard to the collection of taxes in a scheme of amalgamation and/or reconstruction under Section 394 of the Companies Act, read with Section 391 and Section 396. These sections enable the amalgamation of companies whereby the whole or any part of the undertaking, property or liabilities of one company is transferred to another, and these provisions also enable a company in liquidation to transfer its income-tax liabilities along with other liabilities in a scheme of amalgamation. Instances have come to the notice of the Commission where companies were taken into voluntary liquidation, while their income-tax liabilities for periods up to the dates of their liquidation, were yet to be determined. Thereafter these companies transferred, under schemes of arrangement, all their assets and liabilities to other companies, and one of the results which ensued was to defeat the recovery provisions of the Income-tax Act in respect of the income-tax demands subsequently raised against the liquidated companies. In one case which came to the notice of the Commission, the Income-tax authorities applied the recovery provisions of the Income-tax Act for realisation of the income-tax dues of the transferor company from the transferee company. In the relevant proceedings, however, it was held by the High Court that the taxing authorities had no jurisdiction to adopt such proceedings because the transferee company was neither an 'assessee' under the Act nor was any amount due from it as 'arrears'.

54. It is, therefore, recommended that:—

- (i) Provision should be made in the Income-tax Act to authorise the issue of a fresh demand notice on a transferee company which takes over all the liabilities of the transferor company including its income-tax liability, under a scheme of arrangement under Section 394 read with Section 391 or under Section 396 of the Companies' Act;
- (ii) Section 220 of the Income-tax Act, 1961, which lays down the circumstances in which an assessee is 'deemed to be in default' should be modified to include a transferee company which takes over the income-tax liabilities of the transferor company in pursuance of any scheme of arrangement.

Destruction of Books of Account

55. Section 209 (4A) provides that the books of account of every company relating to a period of not less than eight years immediately preceding the current year shall be preserved in good order, and Section 550 provides for the preservation of books in a winding up. The Commission noticed in many cases that where liquidated companies were amalgamated with other companies the amalgamating company took charge of the properties, including the books.

of the liquidated company, and within a short time destroyed the books as being redundant for its purposes. We have cited various instances of this practice in the first part of our report.

56. The amendment to the Companies' Act as mentioned above appears to have taken care of this practice, but there is one circumstance which has not been provided for i.e., where a company is amalgamated with another company without being liquidated. The Act is silent on this point and it is, therefore, recommended that:

Where a company has been amalgamated with another without liquidation, the provisions of Section 550 shall, notwithstanding there being no liquidation, apply to the books of the transferor company and it should be made incumbent on the transferee company to retain the books in good order for the period for which it has been directed so to do.

Prohibition of allotment until receipt of minimum subscription

57. Under the existing provisions of Section 69 of the Companies' Act a company cannot allot any of its share capital offered to the public for subscription, unless the amount stated in the Prospectus as minimum subscription has been received by the company. Sub-section (4) of the same Section provides that all moneys received from applicants for shares shall be deposited, and kept deposited, in a scheduled bank until either they are returned to the applicants or the certificate to commence business is obtained under Section 149.

58. An instance came to the notice of the Commission where a company obtained its certificate to commence business by filing a statement in lieu of Prospectus. Thereafter, further capital was offered to the public, and the moneys received from applicants were not deposited in a scheduled bank but were allowed to remain in the hands of a sister company, which had also acted as underwriters. The company was enabled to do this, because under the provisions of Section 101 (2B) of the Indian Companies' Act, 1913, analogous to Section 69 (4) of the Companies' Act, 1956, the moneys received from applicants were required to be deposited in a scheduled bank until required to be returned to the applicants or until the certificate to commence business was obtained. Since, in this instance, the company had already obtained the certificate to commence business after filing the statement in lieu of Prospectus, it was not obliged to keep the moneys in a scheduled bank when these were received as a result of the Prospectus subsequently issued.

59. In view of this, we recommend that—

The words "until the certificate to commence business is obtained under Section 149" be deleted from Section 69 (4) and instead the following words be added, namely, "till the amount stated in the Prospectus as the 'minimum subscription' is raised."

Administrative Machinery

60. Since it is within the competence of the Commission not only to recommend amendments to the law but changes in the organisation a

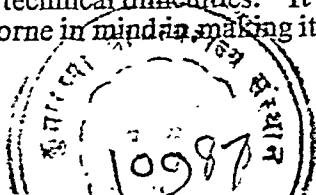
working of the machinery as well, the Commission would wish Government to consider one important issue relating to the organisation and working of the various Departments of Government which are at present dealing with the corporate sector. The Department of Company Law Administration deals generally with the working of the Companies' Act, ensures its compliance, and is the regulating authority where Central Government sanction is necessary under the various Sections of the Act; but there are other departments which deal with different aspects of the matter, such as, the control over the capital issues, stock exchange regulation, etc. These Departments come under a Ministry different from the Ministry under which the Department of Company Law Administration functions, and the Commission feels, as the Bhabha Committee did, that there is the need for integrated administration of the Companies Act as well as other matters connected with the corporate sector.

Conclusions

61. The Companies' Act of 1956, and the Amendment Act of 1960, has certainly brought about far reaching changes to the provisions existing under the Indian Companies' Act, 1913 as amended in 1936. Various deficiencies and malpractices disclosed and discovered in the administration of companies have been lessened and the loopholes plugged to a large extent.

For example, [one of the malpractices which came to our notice, namely, the premature and deliberate termination of managing agencies and payment of compensation for termination, has been effectively dealt with in the Companies' Act as well as in the Taxing Statute. We are, therefore, left with not many recommendations to make, and in making these, our endeavour has been not to impose any unnecessary burden on the corporate sector, its directors and executives—such restrictions as would not yield any useful results. At the same time, we have striven to make recommendations so that the deficiencies which exist can be eradicated. As the Jenkins Committee has remarked, finality cannot be expected in the field of Company Legislation; and they go on to comment that it is necessary for the protection of shareholders, creditors and the intending investors, that the activities of companies, and those responsible for their management, should be subjected to a considerable degree of statutory regulation and control. But they also may say that controls and regulations carried to excess, may defeat their own objects, and in this respect, they share the view expressed by the Greene and Cohen Committees as to the undesirability of imposing restrictions, which would seriously hamper the activities of the honest man, in order to defeat an occasional wrong-doer and the importance of not placing unreasonable fetters upon business which is conducted in an efficient and honest manner. We are in respectful agreement with this view.

62. We feel that no law can provide absolute remedies to stop malpractices, and a balance has to be achieved between attempting to stop malpractices and imposing fetters on honest businessmen, particularly when legislation can be defeated by human ingenuity, as unfortunately sometimes happens. In such circumstances, the wrong-doer succeeds anyhow and the honest businessman is saddled with a considerable amount of technical difficulties. It is this aspect of the matter that the Commission has borne in mind in making its recommendations.



63. We have not taken the evidence of Chambers of Commerce and other bodies representing Commerce and Industry, as we have been assured that if any legislation is contemplated, the normal process of consultation will ensue, and also because the time at our disposal between the submission of the investigation part of our Report on 18th June and making these recommendations was just over four months.

64. We have acknowledged in the first part of our Report the hard work, coupled with devotion to duty, which has been put in by the staff of the Commission, and in particular, our Secretary, Shri P. L. Mukherjee. We thank them all once again with the deepest sense of gratitude.

(V. R. SEN)

Chairman,
31-10-62

(N. R. MODY)

Member,
31-10-62

(S. C. CHAUDHRI)

Member,
31-10-62

In addition to these loans his purely personal expenses were paid by D.C.P.M. though he was neither a director nor an officer of the company in those years. The payments between 1948-49 and 1950-51 totalled Rs. 4,62,339.

Loans were also made as under to companies that are said to have gone to him on the dissolution that Shanti Prasad Jain and J. Dalmia pleaded. The amounts outstanding against them each year were as below :

Date	Company	Amount
		Rs.
31-12-47	Dalmia Investment Co.	1,05,85,503
29-2-48	Rashtriya Financial Corporation	1,31,95,595
	Bennett Coleman & Co. Ltd.	41,34,226
	Allenberry	1,08,34,817
	Rashtriya Investors	56,95,398
	Dalmia Investment Co.	86,69,492
29-2-49	Rashtriya Financial Corporation	1,31,95,595
	Bennett Coleman & Co. Ltd.	41,34,226
	Allenberry	1,08,34,817
	Rashtriya investors	56,95,398
	Dalmia Investment Co.	55,57,849
28-2-50	Bennett Coleman & Co. Ltd.	71,57,426
	Dalmia Investment Co.	74,250
	Allenberry	53,98,713
28-2-51	Rashtriya Financial Corporation	2,88,33,039
	Bennett Coleman & Co. Ltd.	69,75,868
	Dalmia Investment Co.	74,250
	Allenberry	7,31,050
30-10-51	Bennett Coleman & Co. Ltd.	94,41,792

The other members of the Group also benefited from the activities of D.C.P.M. J. Dalmia received loans too, and at the end of D.C.P.M.'s financial year in 1948 a sum of Rs. 30,94,038 was outstanding against him personally. In addition, his companies received loans and the sums outstanding against Vyapari Ltd., on 28-2-49 and 28-2-50 were as Rs. 33,88,527 and Rs. 1,03,32,791.

Shanti Prasad Jain is not shown to have received anything personally but companies that he claimed as his had the following outstandings against them :

Date	Company	Amount
		Rs.
28-2-49	Ashoka Marketing	34,33,134
28-2-50	Ashoka Marketing	87,70,373
28-2-51	Ashoka Agencies	2,00,00,000

It was argued that there was nothing wrong in this because D.C.P.M. was a D. J. Group concern at the outset and was then an R. Dalmia concern and so it had the right to do what it liked with its money. But that does not give the full picture. The money came, not from the pockets of the D. J. Group or from its private concerns but from public limited

companies, from banks and from Insurance companies under the control of the D. J. Group and R. Dalmia. They abused their control of these various concerns by making them lend money to D.C.P.M. to their disadvantage and then utilised the moneys so obtained in the ways that we have indicated. But for these borrowings D.C.P.M. would not have been in a position to advance these moneys as above. We have analysed this at length in Volume V which deals with D.C.P.M.

2. Improper Transfer of Assets

Another abuse of control consisted in the improper transfer of the assets of one company to another with the object of benefiting the D. J. Groups or R. Dalmia improperly and thereby causing loss to the investing public. This was done in the following ways.

By improperly making, or purporting to make Inter-company investments by mere book entries. These entries purport to show:—

- (a) that subscriptions to share capital were made in cash though in fact no cash was received;
- (b) that payments for the purchases and the sales were made or received, in the majority of cases in cash, though in fact only book entries were made debiting or crediting the respective accounts;
- (c) that the shares were beneficially owned by the companies, whereas in fact they were invariably not registered in the name of certain individuals;
- (d) that the shares were purchased and sold in the normal course of business, while in fact the rates were manipulated with the object of benefiting the D. J. Group or R. Dalmia, and/or the companies in which they or he were mainly interested. In the majority of cases these shares did not yield any dividend or they were transferred to companies and persons within the D. J. Group just before the declaration of dividend.

In some cases we found the same block of shares appearing as assets in the Balance Sheet of one company and within a few months, by mere book entries, they appear as assets in the Balance sheets of other companies. The object was to cover up loans made by the public companies to companies in which the D. J. Group or R. Dalmia were mainly or solely interested.

3. Liquidations

This was another device. After the public companies were squeezed dry the husks were discarded and destroyed. The favourite method was to bring the company to voluntary liquidation, appoint a willing liquidator who fell in with the scheme, get a scheme of arrangement sanctioned by the courts, hand over all the assets and records and books to a purely R. Dalmia, concern in which the directors were the tools of R. Dalmia, and then get the transferee company to destroy the books and records so that traces of the frauds and manipulations were destroyed.

We have examined the process in detail in the following cases :

Company Liquidated	Transferee Company	Date	Liquidator
D. J. Airways	D. J. Aviation	10-2-53	C. P. Lal
S. S. B. Mills	S. A. Industries	31-12-51	R. D. Joshi & D. D. Joshi
M.D.M. Co.	S. A. Industries	31-12-51	R. D. Joshi & D. D. Joshi
V. V. Ltd.	B. U. A.	11-4-53	D. A. Patel
D. C. P. M.	Delhi Glass Works Ltd.	18-2-53	D. A. Patel

We have set out in detail the conduct of the liquidator C. P. Lal and have shown how he did his utmost to thwart investigation by the Inspectors. R. D. Agarwal, another Liquidator in another company did the same thing with us. He was asked to produce certain documents relating to D.C.P.M. He refused to do so voluntarily on the ground that they did not relate to the matters under inquiry. He was therefore summoned to produce them under section 4(b) on 14-3-1960.

He did not come on that date nor did he send the books. Instead, he sent a letter from Meerut saying that he was too ill to travel. We were not satisfied with the explanation and issued a warrant for his arrest. On 17-3-60 Mr. D. R. Prem appeared for him and undertook to produce him on the 23rd and, asked us to withdraw the warrant. We did so, but the books were not produced.

Agarwal appeared on the 23rd but still did not produce the books. He was asked why he did not produce them and he said that they did not relate to the matters under inquiry. When he was cross-examined about this he was forced to admit that they did and than all he could say was that.

"I did not examine all these things simply because the company was a scheduled company."

He was a lawyer, so his attention was drawn to the provisions of the law regarding the production of documents, and all he could say was that he did not look up the law regarding the obligation to produce documents in response to a summons.

Turning next to his letter saying that he was too ill to attend on 14-3-60 this turned out to be false. That letter was purported to have been signed on the 14th at Meerut. It is Ex. 544. It was handed over to us in Delhi on the same morning. Agarwal says that it was typed in the Meerut Bazar on the 14th morning, signed by him the same morning and sent to us by bus. It was despatched from Meerut at 7 A.M. on the 14th. He said Exs. 546 and 547 were also typed at Meerut on the 14th and signed by him at the same time as Ex. 544.

He was shown Exs. 551, 552, 553 and 554. These were not typed at Meerut but at Delhi and the same typewriter was used as the one that was used for Exs. 544, 546 and 547. Agarwal admitted that no Delhi typewriter was taken by him to Meerut, therefore, it is clear that Exs. 544, 546 and 547 were typed at Delhi before the 14th and that if they were really sent from Meerut on the morning of the 14th Agarwal took them with him ready typed before he left for Meerut and the evidence that he

gave before us on oath was deliberately false. It is clear that Exs. 544, 546 and 547 were manufactured beforehand to serve as an excuse for not attending Court with the books on the 14th.

When the conduct of these two liquidators, C. P. Lal and R. D. Agarwal are viewed together the pattern of attempts to prevent any scrutiny of documents that are likely to relate to these companies becomes clear, particularly when we add to that conduct the fact that these liquidations led to the destruction of material evidence.

In Agarwal's case we called for a particular resolution embodied in the Minute Book of D.D.C. After receiving our letter Agarwal deliberately handed the book over to Swadesh Nirman. When we tried to get the books from Swadesh Nirman, we were told that the books of Swadesh Nirman had been handed over to Bharat Development Private Ltd. The only way in which we were able to get the book in the end was by issuing a search warrant for a simultaneous search of the premises of Swadesh Nirman, Bharat Development and R. D. Agarwal's private residence.

In order to establish that these liquidations were not *bona fide* and that they were brought about in accordance with a well thought-out scheme we collected evidence of 19 other companies that were taken into voluntary liquidation within a period of 5 years from 1951 to 1956. They are all non-scheduled companies so we have not looked into their affairs, but the evidence of similar facts is relevant under sections 14 and 15 of the Evidence Act to establish bad faith, intention and design. We are using this evidence for that purpose. The 19 companies are :—

1. C. Lazrus & Co. Ltd.
2. Cross Words Ltd.
3. Dalmia Jain & Co. (Jind State) Ltd.
4. Delhi Glass Works Ltd.
5. Dadri Marketing Ltd.
6. Gwalior Bank Ltd.
7. General Marketing Co. Ltd.
8. Govan Brothers.
9. Indian National Airways Ltd.
10. Jaipur Agencies Ltd.
11. Jaipur Traders Ltd.
12. Premier Merchants Ltd.
13. Premier Trading Corporation Ltd.
14. Pepsu Trading Co. Ltd.
15. Rashtriya Agencies Ltd.
16. Rashtriya Financial Corporation Ltd.
17. Rashtriya Investors Ltd.
18. Rajasthan Udyog Ltd.
19. Vishwa Industries Ltd.

Of these 19 companies, the books of account and records were destroyed in the following nine cases within a period of 4 years from 1953.

1. Gwalior Bank Ltd.
2. Rashtriya Financial Corporation Ltd.
3. Rashtriya Investment Ltd.
4. General Marketing Co. Ltd.
5. Premier Merchants Ltd.
6. Premier Trading Corporation Ltd.
7. Jaipur Traders Ltd.
8. Jaipur Agencies Ltd.
9. Rashtriya Agencies Ltd.

Further evidence of the pattern and design is to be found in the fact that M. L. Sodhani and R. Sharma appear as a common factor in the following cases that we have investigated.

M. L. Sodhani

Director at the relevant time of D. J. Aviation, South Asia Industries and Delhi Glass Works, Ltd., the three companies that authorised the destruction of the account books and records of D. J. Airways, S.S.B. Mills, M.D.M. Co., and D.C.P.M. respectively.

R. Sharma

Director at the relevant time of D. J. Aviation, and South Asia Industries which authorised the destruction of the books and records of D. J. Airways, South Asia Industries, S.S.B. Mills and M.D.M. Co. respectively.

The same two persons endeavoured to prevent the liquidator from letting the Inspector appointed under the Indian Companies Act examine the books of D. J. Airways and Allenberry. The destruction of the books had a similar object in view, namely to make any inspection into the affairs of these companies as difficult and impossible as could be managed.

Another factor that links up the pattern is the fact the shareholders of the following companies passed the following unusual resolution at Extraordinary General Meetings of the several companies in identical terms. B.U.A. on 21-12-56, D. J. Aviation on 19-12-56 and L.E.S. Co. on 22-12-56 and Allenberry on 2-12-56.

"Unanimously resolved ratifying all the past acts and transactions of the management and expressing confidence in the management and stating that the Commission was unwarranted and unjustified."

4. Schemes of Arrangement : Courts and Arbitrators

Even the procedures of the courts and arbitrations were pressed into service by R. Dalmia to achieve his ends. The formalities and procedures prescribed by the law were followed in all the liquidations. But it is obvious that the schemes that we have examined could not have been

carried through but for the weaknesses in the safeguards that the law has attempted to provide. These safeguards cannot work unless the assumptions on which they are founded exist.

The first assumption is that there is an intelligent and alert body of shareholders able to look after their own interests. In the cases that we have here the shareholders were scattered and the registered officers of some of the companies were situated in inaccessible places : thus the registered office of South Asia Industries (the former LESCO) was found at Gurgaon a small out of the way place about 18 miles from Delhi, and only a branch office was maintained at Delhi. But when we ordered a search of the offices of South Asia Industries all that we found at the registered office was a receipt saying that all the records were in Delhi. This arrangement could hardly have been for a bona fide purpose.

The so-called General Meetings and Extraordinary General Meetings of the shareholders were usually a farce. In practice it meant, in the liquidations that we have examined, that a very small group consisting of R. Dalmia and his men, with sometimes a small minority of independent shareholders easily outvoted could do as they pleased.

The next assumption on which these safeguards are based is that there will be independent liquidators who will be alert to safeguard the interests of the general body of the shareholders. Here we have found them willing tools in the hands of those in control. In one case the Liquidator was promised a high remuneration for his services. We refer to the fee of Rs. 52,500 promised to C. P. Lal and contrast it with the Rs. 500 paid to D. A. Patel.

Next, unless the courts are equipped with personnel well versed in Company Law and practices and are given adequate machinery to look into malpractices it is impossible for them to function effectively. When there is collusion between all who appear before the court, and the Judge is presented with facts that appear fair and proper on the surface, what else can he do but sanction the scheme put forward. Except in large towns like Calcutta and Bombay, where there is adequate machinery to cope with liquidations, the machinery provided elsewhere is not enough to unearth hidden flaws and frauds.

Arbitrators are in the same position. When both sides collude and there is no real contest the result is a foregone conclusion whatever the eminence of the arbitrators.

In the liquidation proceedings of D. J. Airways a few shareholders did protest. But they were either bought off or silenced, and in the end they withdrew their objections and agreed to the scheme. All the outward forms of the law were observed. But, things being what they are, that which appeared on the surface did not accord with the hidden realities beneath.

5. Registrar of Companies

Next comes the Registrar of Companies. Unless the hands of the Registrars are strengthened and they are given adequate tools with which to work efficiently and effectively they might as well not exist. In the

liquidation of D. J. Airways we have shown how negligent the Registrar was.

The cases before us show that unscrupulous men with money who can buy brains at will, know of these weaknesses and exploit them to their own advantage. R. Dalmia had no difficulty in walking straight through all the so-called safeguards, and indeed, at times treated them with contempt, as his conduct in thwarting the investigation into the affairs of some of his companies by the Inspectors appointed under the Indian Companies Act shows. We have explained this in the liquidation chapters of D. J. Airways. *In our case also we have found it impossible to get at the whole truth.*

6. Auditors

Audits are also necessary safeguards against mistake, negligence and fraud. But here again, everything depends on the honesty, competence and thoroughness of the audit. At least one of the auditors of the scheduled companies, P. S. Sodhbans was dishonest. We have examined his audits at length in D. J. Airways, Volume III, Part 2, Chapter 2(d); and in L.E.S. Co. Volume VII.

Apart from the dishonesty of P. S. Sodhbans in the audits of D. J. Airways and of the joint venture, the audits of Allenberry by another auditor were not of real value because, though the audit certificates were correct, the auditors never saw the real account books and vouchers. The audits that they made were only of the headquarters books and they never saw the original books and vouchers of the branches where the transactions were actually carried out. As far as we could gather the books of the branches were never audited and were never seen by any auditor.

The method was this. The branches sent in certificates of the state of their books to the head office and the head office wrote up the head office books according to the facts and figures given in the branch certificates from the branches. The auditors, in auditing the head office books, only saw the certificates sent in from the branches and so long as the head office books corresponded with these certificates the auditors were satisfied and gave their audit certificates accordingly. This fact is set out in the audit certificates and of course the certificates are technically correct, but they are not worth much in determining the real state of the company.

Let us see how this worked in the case of the Joint Venture which was a partnership between a public company. D. J. Airways, and Allenberry, a private D. J. Group concern. Allenberry did all these sales on behalf of the partnership and carried out all the repairs. Many of the actual sales and repairs were done at the branches. The branches had the vouchers and kept the books reflecting the actual transactions. But they did not show these to the auditors. They only sent in periodical returns of their business to the head office at Calcutta and the head office would then base their own books on the certificates so received. The Joint Venture part of the transactions would then be certified from Calcutta and a statement would be sent to Delhi where the books that were supposed to reflect the state of the Joint Venture were kept.

Then P. S. Sodhbans was shown the certificates from the Calcutta office and issued his audit certificate on the basis of the Calcutta certi-

ificates. The Calcutta certificates in turn were based on the certificates and the head office received from the branches. So what Sodhbans in Delhi really certified was that the Joint Venture books correspond with the certificates received from Calcutta, and the Calcutta auditor certified that the Calcutta books corresponded with the certificates received from the branches. Any dishonesty or manipulation in the books of the branches would of course pass unnoticed.

7. Selling and Managing Agencies

One of the methods that the Group, and later R. Dalmia, used for enriching themselves was by appointing concerns from which they derived the main benefit, as the selling and managing agencies of the public companies of which they obtained control. We are not criticising these appointments simply on the ground that they were appointments of selling and managing agencies because we recognise that selling agents are necessary and we also realise that the managing agency system was then in vogue. But there can be no doubt that this did help to swell the coffers of the Group. These agencies got their remuneration at high rates while the shareholders of the companies that they managed got next to nothing on their investments. But that is not what we are trying to bring out here. The gravamen of our charge in this respect is about the abuse that occurred in these cases.

In the S.S.B. Mills and M.D.M. Co., and in D.D.C., the managing agents were not necessary, and they were fraudulently brought into existence for an improper end, or, at any rate, having been brought into existence they were used for fraudulent purposes. An examination of the following sequence of events will show what we mean.

First, the managing agency companies were incorporated. Less than two years later they were appointed as managing agents of these two mill companies for long terms of 20 years each.

An important clause in their agreements was that if the managing agreements were to be terminated prematurely then the managing agents were to get compensation, which, very broadly speaking would give them in a lump sum as much as they would have earned during the unexpired terms of their contracts had they stayed on, with however this difference: if they had stayed on, their remuneration would have been spread over a long term of years instead of being paid all at once in a lump sum.

Within 16 days of their appointments breaches occurred and the managing agents were paid heavy compensation. The breaches occurred on 27-10-50 and the amount of compensation from the two mills was Rs. 1,19,90,000.

There was a similar pattern in the case of D.C.P.M., which was appointed the selling agents of the two mills. The term in this case was for 10 years. Two years later there was a breach and again heavy compensation was claimed and paid. The breach in this case was also on 27-10-50. The amount of the compensation was Rs. 46,90,000.

A similar pattern was followed in D.D.C. In this case the Dalmia Jain (Jind State) Co. was appointed Managing Agents. The appointment

was for 19 years. In 1952 there was a breach and Rs. 6 lacs compensation was paid.

8. Shriyans Prasad Jain

A similar pattern was followed in the case of Shriyans Prasad Jain. He is the elder brother of Shanti Prasad Jain. He was appointed to a salaried post in D.C.P.M. at a remuneration of Rs. 4,000 per month, and in addition, over a certain period, his perquisites reached a figure that averaged Rs. 5,400 per month, swelling his total income from this source to Rs. 9,400 a month.

The appointment in his case is said to have been for a term of 25 years. Even if that was a genuine term it was very unusual. He was appointed in 1943 and his age was then 36. Even in Government service a man of 36 would never be appointed for a term of 25 years; nor would he get as a high a salary when his perquisites are added to his Rs. 4,000 a month. But we are examining the termination at the moment and not the appointment.

On 7-2-50 there was a breach and he was paid Rs. 7 lacs as compensation, and that by a company that was unable to pay its ordinary shareholders any dividends from 1941 onwards and its preferred shareholders from 1943.

When these transactions are viewed together the pattern and the fraud become obvious; breaches on 7-2-50, 27-10-50 and in 1952.

The total compensation paid in these two years was Rs. 1,79,80,000.

Incidentally, the case of Shriyans Prasad Jain shows how the relatives of members of the D. J. Group came in for their share of the pickings from public companies. It is true D.C.P.M. was almost 100% R. Dalmia at that time; but it got its funds from the public companies. It could not have paid these sums without getting the money from elsewhere. This was one of the many means devised to syphon off money from public companies into the pockets of the D. J. Group, their relatives and their concerns.

9. Manipulations

We have found a number of instances in which books of account, Balance Sheets and Profit and Loss Accounts were manipulated. We have dealt with them in detail in the various volumes that deal with the different companies. It would be tedious to catalogue the instances here so we invite attention to the appropriate chapters about this in the several volumes.

Different Financial Years

Full advantage was taken of the fact that the companies had different financial years to manipulate inter-company loans, transfers and investments. In particular this enabled the same blocks of shares to be moved from company to company in order to give a false appearance of prosperity to companies that were not doing well, and in order to manipulate the profits and losses for the year. These have been set out in detail in the volumes that deal with the management of the affairs of each company.

Non-declaration of Dividend

Another abuse of control was not to declare dividend although the companies concerned made profits. This had the effect of depressing the value of the shares and enabled R. Dalmia to purchase the shares at reduced rates and thus cause considerable loss to the investing public.

Once a sufficiently large number of shares were acquired then dividends were declared and R. Dalmia reaped the profits. That happened in the case of all the ten companies with which we are dealing except Allenberry and L.E.S. Co.

Converting Public Limited Companies into Private Limited Companies

This was done in the following cases on the dates given below :

D.J. Aviation Ltd.	on	26-4-52
D.C.P.M.	"	10-4-52
L.E.S. Co.	"	5-12-52

The object was to take advantage of the less stringent provisions of the Companies Act in favour of private companies.

Avoidance of Income Tax Liability

This was done as follows :

- (a) By suppressing taxable profits by manipulation of accounts;
- (b) By extinguishing reserves and accumulated profits before taking the companies into liquidation;
- (c) By introducing secret profits under cover of share money by allotting shares to non-existent persons;
- (d) By transferring the assets and liabilities of companies that were taken into liquidation while their Income-tax liabilities for the periods upto the dates of liquidation were yet to be determined by initiation and/or completion of the relevant assessment proceedings. The transfer of assets and liabilities was effected to other R. Dalmia concerns under scheme of arrangement under the Indian Companies Act, 1913.

We will now summarise how each of the above methods was put into effect.

(i) Income-tax liability was evaded by suppressing the taxable profits of the D.J. Group companies and concerns mainly by the following manipulations of accounts :

- (a) Wrongful understatement of the sales, and/or inflation of the selling and depot expenses of the Disposal Vehicles and Stores Business and also of the *indirect* expenses attributable to this business, and/or inflation of the 'cost of sales' chargeable to Revenue;
- (b) Wrongful diversion of taxable profits of the joint venture and the other business of Allenberry to D.C.P.M. to be set off against its losses, for avoiding full incidence of Income-tax thereon;

(c) Wrongful creation of revenue charge against the taxable profits of S.S.B. Mills and M.D.M. Co. under the cover of compensation payments for purported breaches of Managing and Selling Agency Agreements with other sister concerns of the D.J. Group;

- (i) by bringing into existence artificial transactions in its purchase and sale of shares; and/or
- (ii) by bringing into existence artificial transactions in its purchase and sale of shares; and/or
- (iii) by recording and accounting for share dealing and speculative transactions in the books of D.C.P.M. as its own business, even though they were done in the account of R. Dalmia and/or others.

(ii) Allenberry at one stage had planned to treat all transactions in the Disposal Stock Business as one deal for computation of profits and assessment thereof to Income-tax on the conclusion of the deal. Accordingly the following manipulations were made to put off the assessment of such profits and thereby avoid payment of Income-tax :

- (a) Wrongful omission to adjust in the Disposal Stock Business Account either any "cost of sales" or any "profit or loss", thereby improperly carrying forward the closing stocks at "Book value";
- (b) Wrongful inflation of the 'Book value' of the closing stock to postpone the conclusion of the deal till the 'Book value' was reduced to NIL.

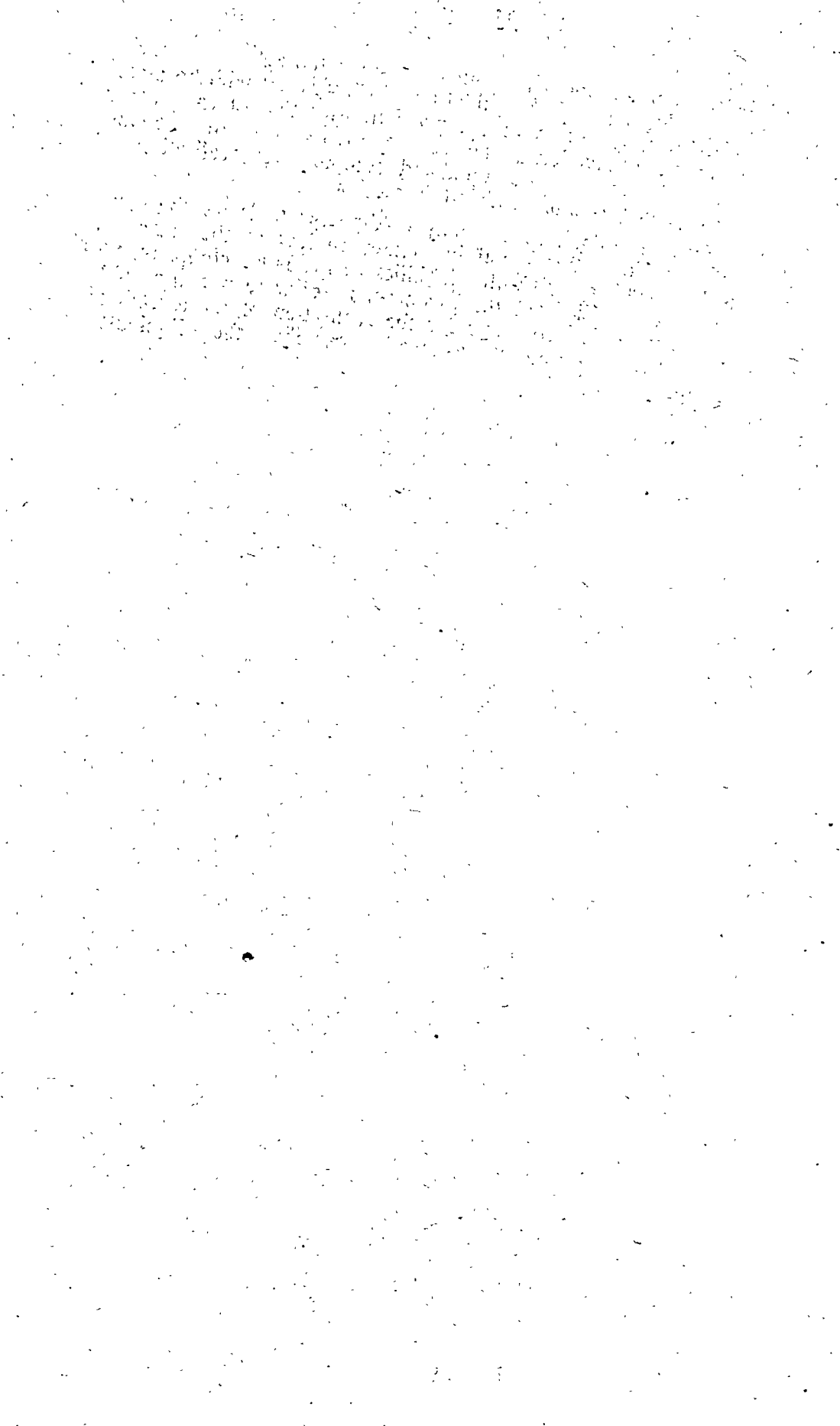
(iii) Taxation was also avoided by extinguishing the Reserve and accumulated and other profits of S.S.B. Mills and M.D.M. Co., which otherwise would have been distributable on liquidation and would have been received by the principal shareholders as surplus liable to be taxed as "Dividend" and/or 'Business profits' in their hands. This was manipulated by :

- (a) Withdrawal of their Reserve and accumulated profits under the cover of compensation payments for purported breaches of Managing and Selling Agency Agreements with other D.J. Group concerns which received such payments as their non-taxable incomes;
- (b) Wrongful diversion of profits of these companies into the coffers of the other D.J. Group concerns by manipulating sale of investments and land held by the former.

(iv) Payment of Income-tax liability of several companies taken into liquidation was avoided by defeating the recovery provisions of the Income-tax Act or realisation of the arrears of income-tax. This was done as below :—

- (a) Although the Income-tax liability of a company (in liquidation) for periods upto the date of its liquidation was yet to be determined by initiation and/or completion of its relevant income-tax proceedings, all its assets and liabilities were transferred to another D. J. Group company under a scheme of arrangement under section 153/153A or 208C of the Indian Companies Act, 1913.

- (b) Substantial Income-tax demands were subsequently levied against the company in liquidation, but it was left with no assets whatsoever by reason of the prior transfer thereof to another company. Application of the recovery provisions of the Income-tax in the case of the liquidated company for realisation of the arrears was thus rendered infructuous.
- (c) Even if the transferee company holding the assets of the company in liquidation could be treated in law as the successor to be bound to satisfy the liabilities of the latter company, the recovery provisions of the Income-tax Act were not applicable to the transferee company for the realisation of the arrears of Income-tax of another 'assessee', namely, the liquidated company.



CHAPTER VIII

NATURE AND EXTENT OF THE PERSONAL GAINS

(a) At cost of Investing Public

We tried in our Statements of Matters to work out the personal gains to the members of the Group as a group but we are not satisfied that our approach was right. We do not think it is possible to do this except to a certain extent in the case of R. Dalmia. We have not got sufficient material to work on. For instance, we have no material to indicate that the group was in existence as a group at the date of some of the transactions. It is true we have disbelieved the story of dissolution on 31-5-48 but that in itself is not enough. We do not, for example, know when the profits of most of the concerns we have examined were distributed; nor do we know who shared in them. We have therefore not attempted to allocate individual gain except in R. Dalmia's case where more data is available. In his case we estimate that the personal gains made by him or through companies that were wholly, or almost wholly, owned by him amounted to Rs. 2,60,22,781 between 1946 and 1956 as follows):

	Rs.
1. <i>D.J. Airways</i>	
(a) Gain of interest because payment of Rs. 247 lacs was borne by D.J.A though half of this amount should have been borne by Allenberry	3,45,139
(b) Gain of interest on Rs. 35 lacs invested in D.J. Aviation	3,11,562
(c) Gain of interest on Rs. 74 lacs worth of Jaipur Udyog shares ..	3,10,967
(d) Gain of Rs. 2/- per share on 4,29,935 shares acquired from the public by D.C.P.M. at Rs. 3/4/- but which were worth Rs. 5/4/- in the Scheme of Amalgamation	59,870
(e) Gain to B.U.A. on 15,00,000 shares through the Scheme of Amalgamation	15,00,000
(f) Gain through saving of interest as a result of transfer of assets under Ex. 5	1,10,58,709
(g) Gain to D.J. Aviation through acquiring the assets of D.J. Airways which marked out Rs. 7 per share whereas the shareholders were to get Rs. 5/4/-. Therefore, net gain at Rs. 1/12/- on the public holding of 15,37,725 shares	26,91,018
(h) Gain of interest due to D.J. Airways bearing more than half share of its capital for one year ended 30-6-1948 on Rs. 10,02,25,175 at 4½ %	4,20,101
(i) Gain of underwriting commission to D.C.P.M.	7,86,955
	1,82,84,321
2. <i>D.J. Aviation</i>	
Gain to B.U.A. through acquiring 6,600 Pref. shares from Bharat Insurance Co. Ltd.	1,98,000
3. <i>S.S.B. & M.D.M.</i>	
	S.S.B. M.D.M. Rs. Rs.
(a) Loss of interest, after deducting dividends on investment in Bennett Coleman shares and loss on sale of these shares	7,33,148 5,19,5

	Rs.	Rs.	Rs.
(b) Loss of profits on sale of Haines Road Property to D.C.P.M.	46,816	—	
(c) Selling Agency	51,507	64,614	
(d) Managing Agency compensation	1,29,400	1,69,884	17,14,937
	<u>9,60,871</u>	<u>7,54,066</u>	

4. D.D.C. Limited

(a) Purchase of shares at rates well below the true intrinsic value by D.C.P.M., Asia Udyog and B. U. A.	10,93,988		
(b) Arrears of Pref. dividends denied to the shareholders but paid to D.C.P.M., Asia Udyog and B.U.A.	82,266		11,76,254

5. D.C.P.M.

(a) Gain on sale of S.S.B. and M.D.M. shares to Bharat Insurance at inflated rates ..	12,11,000		
(b) Gain on sale of Nahur land to Bharat Insurance	21,19,587		23,30,587

6. L.E.S. Co.

Loss on sale of S.S.B. and M.D.M. shares and loss of interest in favour of D.C.P.M.		23,18,682	
		<u>2,60,22,781</u>	

The above mentioned figure of Rs. 2,60,22,781 does not include the gains made by Allenberry, a company of the D. J. Group and subsequently under the control of R. Dalmia, particularly during the joint venture period, because of the absence of books and records. However, we have attempted to evaluate the gains made by Allenberry and according to us it amounts to Rs. 75,59,535 as under :—

	Rs.	Rs.
Joint venture period upto 31-12-48		
½ share of Rs. 80,83,793		40,41,896
Post-joint venture period profit from 1-7-48 to 31-12-50 had the joint venture continued	70,35,278	
½ share thereof		35,17,639
		<u>75,59,535</u>

Although we have mentioned above that the gain to R. Dalmia and/or companies in which he had a hundred per cent, or near hundred per cent interest amounted to Rs. 2,60,22,781, it does not mean that the other members of the Group did not benefit in any way. Obviously, in a computation such as this, we have been hampered by the destruction of books, in particular those of D.C.P.M. This company, as will be seen from the relevant chapter, was a clearing house through which advances from sound public companies flowed to the companies in which the Group or one or

more of its members had a predominant stake, and it was also a repository for the ill-gotten gains of the Group. These gains did not necessarily flow to R. Dalmia or his companies only. By devious means, it has gone to others as well though in a disguised form.

To give to only three instances :

- (a) in the year ended 28th February, 1948, D.C.P.M. sold 500 shares of Dharangdhara Trading Co. Ltd. purchased at Rs. 4,400 per share to Shanti Prasad Jain at Rs. 2,000 a share. In other words, shares which had cost D.C.P.M. Rs. 22 lacs were sold to Shanti Prasad Jain for Rs. 10 lacs.
- (b) In the year ended 28-2-1949, D.C.P.M. sold certain shares to Shanti Prasad Jain and to Bharat Collieries Ltd. (a company which came under his control), shares of companies said to have gone under the control of Shanti Prasad Jain. These purchases comprised of shares of Albion and Lotherian Jute Mills, Bharat Collieries, Rohtas Industries, Dehri Rohtas Light Railway and Bharat Bank, and the loss sustained by D.C.P.M. in that years on the sales of these shares amounted to Rs. 12,27,177.
- (c) In the year ended 28-2-51, 35,890 shares of Dalmia Investment Co. Limited were sold to Ashoka Marketing, a company controlled by Shanti Prasad Jain at a loss of Rs. 2,87,120.

There are similar transactions also in respect of J. Dalmia.

As we have stated above, in the absence of books we are unable to evaluate the exact benefit obtained by Shanti Prasad Jain and J. Dalmia. But there is no doubt that the gains which flowed to D.C.P.M. were distributed in this manner.

(b) At cost of Exchequer

(Apart from the personal gains, the following companies owned by the D.J. Group and/or one or more of its members, in particular, R. Dalmia, made gains by evading or avoiding taxes. Although the profits have been shown to have been made by the companies, such companies were wholly, or near wholly owned, and controlled by the D. J. Group and later by R. Dalmia.

<i>S.S.B. & M.D.M.</i>	<i>S. S. B.</i>	<i>M.D.M.</i>
Evasion or avoidance of income-tax in consequence of—	Rs.	Rs.
(a) extinguishing the reserves and profits to the extent of loss sustained on sale of Bennett Coleman shares	13,00,834	9,89,021
(b) diversion of the capital profit on sale of Haines Road property	3,45,072	
(c) payment of compensation for termination of selling agency of D.C.P.M.	6,99,268	5,31,180
(d) payment of compensation for termination of selling and managing agency of B.U.A. and V.V. Ltd.	17,56,635	13,01,535
	<u>41,01,809</u>	<u>28,21,736</u>
		69,23,545

Allenberry

	<i>S.S.B.</i>	<i>M.D.M.</i>
(a) Evasion of tax due to suppression of profits:—	Rs.	Rs.
(i) Rs. 80,83,773 during the joint venture period	32,93,261	
(ii) During the half year ending 31-12-48 and in 1949 and 1950 (<i>Vide</i> Ch. IV, Volume IV—Part I)	9,12,942	
	<u>42,06,203</u>	
(b) Evasion of income-tax in consequence of—		
(i) diversion of profits to D.C.P.M. from Drum & Pipeline Section of Allenberry; and		
(ii) understatement of sales of steel sheets in Drum and Pipeline Section	31,29,417	
	<u>73,35,620</u>	73,35,620

[NOTE.—The tax evasion by Allenberry indicated above covers the evasion resulting from the fictitious losses in shares transactions of D.C.P.M. charged to its revenue].

D.D.C. Limited

Evasion or avoidance of income-tax in consequence of compensation payment of Rs. 6 lacs on the termination of Managing Agency. (Estimated at rates of tax obtaining at the time of payment)	2,60,625	2,60,625
	<u>TOTAL</u>	<u>1,45,19,790</u>

The above does not include the benefit obtained by Shriyans Prasad Jain on the compensation of Rs. 7 lacs for the alleged pre-mature termination of his employment.

CHAPTER IX

SUBSCRIPTION OBTAINED FROM THE INVESTING PUBLIC

The Commission has understood this part of the Notification to mean the subscription obtained by the persons and/or the Group and/or the companies concerned in the Group from the investing public as opposed to companies mentioned in the Notification which were in existence but taken over by the Group. Out of the nine companies mentioned in the Notification and D.D.C. subsequently added, the following are the three companies where the subscriptions were obtained from the investing public :—

- (a) D. J. Airways;
- (b) D. J. Aviation; and
- (c) Dalmia Dadri Cement.

Dalmia Jain Airways Ltd.

This Company was floated on 9th July, 1946. At the time of the floatation of this Company, the public subscription amounted to Rs. 3,19,55,650 consisting of 31,95,565 shares as opposed to the subscription of the D. J. Group which consisted of Rs. 30,44,350 comprising 3,04,435 shares. In other words, the public subscription amounted to 91.3% and the D. J. Group holdings to 8.7%. Even this figure of Rs. 30,44,350, consisting of 8.7% of the total holdings include Rs. 16 lacs worth of shares subscribed for by fictitious and non-existing persons. We have dealt with this in Vol. III Chapter 7 of D. J. Airways where we have mentioned how this was done.

The investing public lost a sum of Rs. 1,83,11,820 in D. J. Airways as follows :—

	Rs.	Rs.
<i>D. J. Airways</i>		
(a) on acquisition of 4,29,935 shares from the public by D.C.P.M. at an average rate of Rs. 3/4/- loss of Rs. 7 per share on 4,29,935 shares	30,09,545	
(b) on acquisition of 12,27,905 shares by BUA from the public at an average rate of Rs. 4-0-9.5 per share—loss of Rs. 6-3-2.5 on 12,27,905 shares	76,13,350	
(NOTE.—Although BUA acquired 15,32,340 we have taken only 12,27,905 in evaluating the loss on the ground that of the 15,32,340 shares 3,04,435 shares were acquired from the D. J. Group).		
(c) on 15,37,725 shares with the Public at the time the Scheme of arrangement under Ex. 5 was entered into and which the Shareholders were to receive Rs. 5-4-0 per share. The loss was thus Rs. 5 per share	76,88,625	
		1,83,11,820
(NOTE.—As D.C.P.M. and BUA owned 19,62,275 shares as in (a) & (b) above, then it follows that the investing public owned 15,37,725).		

Dalmia Jain Aviation Ltd.

This Company was floated on 11th March, 1948.

The subscription to the shares of this Company, alleged to have been made in cash, consisted of the following :—

	Rs.
(a) D.J. Airways in which the investing public held at that time more than 85% of the shares, subscribed for 7,50,000 Ordy. shares of Rs. 10 each; and 250 Pref. shares of Rs. 100 each	75,25,000
(b) Bharat Insurance Co. Ltd., in which the policy holders had an overwhelming stake—24,750 Pref. shares of Rs. 100 each	24,75,000
	<u>1,00,00,000</u>

The Bharat Insurance Company on the sale of 6,600 Pref. shares lost Rs. 1,98,000.

Dalmia Dadri Cement Ltd.

This Company, was floated on 26th May, 1938.

We do not have the list of subscriptions obtained from the investing public at the time of the incorporation of the Company, but according to the Annual Return filed with the Register of Companies as of 31st December, 1947 the following position emerges :—

	Preference	Ordinary	Deferred
D.J. Group	2,601	39,330	41,170
Public	6,943	80,925	2,08,830
	<u>9,544</u>	<u>1,20,255</u>	<u>2,50,000</u>
Percentage of Public holding	72.7%	67.3%	83.5%

It may thus be seen that even in 1947, the public was overwhelmingly interested in D.D.C.

From 1951-54 the shareholdings changed considerable and large blocks of shares were purchased by companies which were owned wholly, or almost wholly, by R. Dalmia, such as, D.C.P.M., Asia Udyog and BUA.

As will be seen from the Volume dealing with D.D.C., due to various reasons dividends were purposefully denied to the shareholders with the result that the public unloaded their shares at much less than they were worth, and soon thereafter the arrears of dividends on preference shares were paid off. The loss suffered by the investing public was approximately Rs. 11,76,254 made up as under :—

	Rs.
(a) In acquisition of the Ordy. and Defd. shares from the public at rates well below the intrinsic value of the shares by Companies such as D.C.P.M., Asia Udyog and BUA in which R. Dalmia was wholly beneficial shareholder	10,93,988
(b) Arrears of dividends on Pref. shares which were denied to the shareholders but subsequently paid to D.C.P.M., Asia Udyog and BUA	82,266
	<u>11,76,254</u>

Losses Suffered by the Investing Public

The total losses suffered by the investing public amount to Rs. 2,60,50,280 and these include the companies mentioned in the Notification including the companies mentioned above where subscriptions were obtained from the investing public. Except for the two losses under paragraphs 3(a) on account of S.S.B. and M.D.M. Mills, the other losses have been evaluated on the basis of what the investing public have lost, eliminating the losses *inter-se* the companies in the D. J. Group or companies where R. Dalmia was wholly or near wholly, interested since we have treated these losses as being so to speak, out of one pocket into, another :—

Losses to the Investing Public :

1. D. J. Airways

	Rs.	Rs.
(a) on acquisition of 4,29,935 shares from the Public by D.C.P.M. at an average rate of Rs. 3-4-0—loss of Rs. 7 per share on 4,29,935 shares	30,09,545	
(b) on acquisition of 12,27,905 shares by BUA from the Public at an average rate of Rs. 4-0-9·5. per share—loss of Rs. 6-3-2·5 on 12,27,905 shares	76,13,350	
[NOTE.—Although BUA acquired 15,32,340 we have taken only 12,27,905 in evaluating the loss on the ground that of the 15,32,340 shares, 3,04,534 shares were acquired from the D.J. Group.]		
(c) on 15,37,725 shares with the Public at the time the Scheme of arrangement under Ex. 5 was entered into, and on which the Shareholders were to receive Rs. 5-4-0 per share: The loss was thus Rs. 5 per share	76,88,625	1,83,11,820 ,

[NOTE.—As D.C.P.M. & BUA owned 19,62,275 shares as in (a) & (b) above, then it follows that the investing public owned 15,37,725].

2. D. J. Aviation

On 6,600 Pref. Shares subscribed for by the Bharat Insurance Co. Ltd. in which the interest of the policy holders (the public) was paramount 1,98,000 ,

3. S. S. B. Mills Ltd. & M. D. M. Co. Ltd.

	S. S. B. Rs.	M. D. M. Rs.
(a) Loss of interest after deducting dividends on investment in Bennett Coleman Shares	5,56,475	3,91,050
(b) Loss on sale of Bennett Coleman Shares	1,76,673	1,28,518
(c) Loss of profits on sale of Haines Road Property	46,816	—
(d) Payment of Selling Agency Compensation	51,507	64,614
(e) Payment of Managing Agency Compensation	1,29,400	1,69,884
	9,60,871	7,54,066
		17,14,037

[NOTE.—Item (a) is the total loss to the Company. Whereas the rest of the items represent losses to the investing public according to the percentage held by them at the times the losses were incurred].

4. *Dalmia Dadri Cement*

(a) In acquisition of the ordinary & deferred shares from the public at rates well below the intrinsic value of the shares by Coys. such as D.C.P.M., Asia Udyog & BUA in which R. Dalmia was wholly beneficial shareholder	[10,93,988	
(b) Arrears of dividends on Preference shares which were denied to the shareholders but subsequently paid to D.C.P.M., Asia Udyog & BUA	82,266	11,76,254

[NOTE.—The shareholders sold their shares well below the intrinsic value because of the purposeful policy of not declaring dividends which unduly depressed the value of the shares].

 2,14,01,001

Rs.

Rs.

5. *D.C.P.M.*

(a) Gain on sale of S.S.B & M.D.M. shares to Bharat Insurance at Inflated rates due to which the Bharat Insurance made a loss.		
(i) on 15,900 shares of SSB at Rs. 10 per share	..	1,59,000
(ii) on 5,200 shares of MDM at Rs. 10 per share	..	52,000
(b) Profit on sale of Nahur Land to Bharat Insurance	..	21,19,587
		<hr/> 23,30,587

6. *Lahore Electric*

Loss up to 31-3-1955 on

(i) Sale of SSB & MDM shares	..	32,33,750
(ii) Loss of interest	..	81,95,608
		<hr/> 1,14,29,358

Proportionate loss to the public according to its holdings on the respective dates.

(See Note 8 to Annexure A of the Group Statement of Matters).

 23,18,682

 2,60,50,280

CHAPTER X

RESPONSIBILITY

We have apportioned the responsibility individually in each of the transaction that we have impugned when dealing with them. Here, we will only make a brief survey of responsibility in general terms.

It must be understood that our remarks are confined to the nine scheduled companies and to D.D.C.

It must also be realised that we are only giving a brief survey here in order to give a bird's eye view of the complete picture. Accordingly, we are only touching on the salient features and are not compiling an index of all that is to be found in the succeeding volumes of our report.

R. Dalmia

The evidence shows that he was the master mind behind all the various malpractices into which we have inquired. It shows that he was in control of all the companies under investigation and that nothing of importance could have been done without his knowledge and approval, and in many cases, without his orders. He probably did not know of every detail and was probably content in many cases to plan and direct the general strategy leaving its implementation to subordinates who were placed in the open in order to screen him. They were expected to take the blame should things go wrong.

We are satisfied that no major matter, even of implementation, could have been carried out without his knowledge and approval. We, therefore, hold him responsible for every malpractice that we have dealt with, especially as he has not denied them in any varified written statement before us. Even counsel for Shanti Prasad Jain and J. Dalmia threw the whole blame on him towards the end of the arguments when the cogency of fact piled upon fact left little room for serious denial.

Shanti Prasad Jain

His responsibility is of a three-fold nature; (1) as a member of the group; (2) as a director; and (3) as an individual who took a personal part in some of the transactions that we have examined.

So far as the first is concerned, we have explained that responsibility of that kind is too theoretical to be of practical value for our purposes.

His responsibilities as a director are more series because he was not a dummy and because, in some cases, he was the key man, second only to R. Dalmia. He tried to evade responsibility as a director whenever anything crooked or questionable came to light by saying that he was there only in name at that time and that he took no 'interest' in the concerns because of the dissolution of the group and so forth. He also tried to throw the blame on the other directors by saying that they were the ones

who managed the affairs of the companies and made the necessary decisions. We have not believed him and, when dealing with the transactions individually, we have held him responsible whenever he was a director at the time, and we have assumed that he was there as a member of the D. J. Group to assist R. Dalmia.

In the third capacity we have evidence to show that he took a leading part in some of the transactions that we have questioned and that he was actively associated with others even when he did not take as direct a part. In any event, his responsibility at those times cannot be evaded or shirked.

Dealing with the third category first. We find that Shanti Prasad Jain was actively associated with the following matters that we have considered fraudulent. Each has been examined in detail in other parts of this report.

1. With the floatation and formation of D.J. Airways for the purpose of helping out the D.J. Group's concern, Allenberry, and of entering into a joint venture agreement between D.J. Airways and Allenberry as part of the same plan.
2. With the termination of the joint venture. We have held that Shanti Prasad Jain knew of the termination and that he was actively associated with it.
3. With the manipulation of the joint venture accounts to the detriment of D.J. Airways.
4. With his purchase of the following shares at manipulated low rates, which enabled D.C.P.M. to create fictitious losses and reduce taxable profits :

	Rs.
(a) Dharangdhara Trading Co.	12,00,000
(b) Lothian Jute	2,96,925
(c) Albion Jute	2,14,485
(d) Bharat Collieries	57,482

He was also associated with the following, among other, matters that we consider were in disregard of honest commercial practice.

1. The transfer of the R3A Plant to Allenberry at cost and the manipulation of the accounts in order to ante-date the transaction.
2. He presided over a meeting of the Board of Directors of Allenberry on 13-9-1947 Ex. 252 and 252-A which purported to pass a set of accounts Ex. 84 and Ex. 250 that were not then in existence. The balance sheets were not audited till 10-12-1947 and they were ante-dated.
3. With D.C.P.M.'s borrowings from the Bharat Bank with inadequate security in the year ending 28-2-1948. He was a director of the Bharat Bank and Deputy Managing Director of D.C.P.M. The outstandings at the end of that year were Rs. 1,06,73,663.

Mr. Shah admitted in argument there were some irregularities, but said that it did not matter because, after all, Allenberry was just a glorified

private partnership. We do not agree. In the first place, Allenberry was handling the business and the accounts of a public limited company, Dalmia Jain Airways. Even if there was no dishonesty it would be impossible to condone manipulations of accounts. In the second place, the law requires the observance of certain formalities even in the case of private companies. The formalities are prescribed for good reasons and it would be dishonest commercial practice to evade the laws and by-pass their requirements in this way.

J. Dalmia

J. Dalmia does not seem to have had any direct concern with the management and control of any of the scheduled companies or D.D.C. The evidence shows that there was a technician and his counsel said that that was his only real connection with the D. J. Group enterprises. He acted as a director of a number of the scheduled companies and signed certain balance sheets and some other documents, but, according to his counsel he was a mere dummy—"the biggest dummy of them all", his counsel said. As he did not enter the witness box we are not able to assess this description. But it is true that no witness has spoken of his direct connection with any act of management.

We do, however, find him directly associated with the following matter that we have considered fraudulent, namely, the purchase by him from DCPM at manipulated low rates, of shares in Dalmia Cement & Company. This enabled DCPM to create a fictitious loss of Rs. 2,12,988 and thereby reduce taxable profits.

Shriyans Prasad Jain

We have held that he was directly concerned with the following fraud :—

- (1) Receipt by him of Rs. 7 lacs as supposed compensation from DCPM ;
- (2) With certain frauds relating to the unauthorised use of Government securities by DCPM. He was the "in charge" of the Bombay Office of DCPM and these frauds could not have escaped his notice. As a matter of fact there is evidence to show that Shriyans Prasad Jain knew about the purchase of securities for Bharat Insurance Co. Ltd., and also the retention of the sale proceeds of the securities of the Bharat Bank Ltd.

Shital Prasad Jain

He was mentioned in the preamble to the Notification but was not incorporated in the operative part. In any case, he had no hand in the control of any of the scheduled companies or of D.D.C. He was, however, directly concerned with the accounts, and we find him actively associated with carrying out most of the manipulations that we have considered fraudulent and improper and without which many of the frauds with which we have dealt could not have been affected. He was served with Statements of Matters in respect of 10 companies. He did not choose to file any reply and repudiate the allegations against him.

Others

We do not intend to set out any of the others who were concerned in more minor ways with the malpractices that we have examined because they are not mentioned in the Notification and because the part they played was a minor one. We have dealt with them when dealing with each separate transaction.

CHAPTER XI

FINALE

We now conclude what has been a back breaking task for all concerned and in particular for our office staff who have had to bear the heat and toil of the day. We wish to express our appreciation of the admirable spirit in which they have carried out their several tasks. Some of them have worked on in spite of ill health in their anxiety not to inconvenience the Commission or to impede its work.

We single out in particular our Secretary, P. L. Mukerjea, for his meritorious and conscientious work.

We also desire to mention D. C. Taneja and Madan Lal and J. R. Tandon, the Officers on Special Duty, and the other Investigating Officers and the Office Superintendent.

We also place on record our appreciation of the assistance that we received from our former Secretary, R. M. Bhandari at the earlier stages of our work.

We also desire to pay tribute to our Stenographers and in particular S. Chatterjea, who have worked incessantly in very trying conditions. All concerned have had to put up with considerable discomfort in working conditions and have given up innumerable holidays and, especially during the public hearings and latterly while working in connection with our completion of the report, they worked very long hours in the heat of a Delhi summer. The fact that we have been able to produce a report of over 1,140 pages within two months of the completion of the arguments almost to a day tells its own tale of the devoted work that the staff have put in. The least that we can do is to express to them our appreciation and gratitude for their devoted labours and assistance and to extend to them our thanks.

In addition we desire to thank counsel who have also had to put in many hours of hard and exacting work.

(VIVIAN BOSE)	(V. R. SEN)	(N. R. MODY)	(S. C. CHAUDHURI)
New Delhi	New Delhi	Bombay	New Delhi
15-6-62	15-6-62	16-6-62	15-6-62



APPENDIX

THE GAZETTE OF INDIA

EXTRAORDINARY

Part II—Section 3

PUBLISHED BY AUTHORITY

No. 338

NEW DELHI, TUESDAY,

DECEMBER 11, 1956

MINISTRY OF FINANCE

(Department of Economic Affairs)

ORDER

New Delhi, the 11th December, 1956

S.R.O. 2993—Whereas it has been made to appear to the Central Government that

- (1) a large number of companies and some firms were promoted, and/or controlled by Sarvashri Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, Shital Prasad Jain or some one or more of them and by others being either relatives or employees of the said person or persons, closely connected with the said persons ;
- (2) large amounts were subscribed by the investing public in the shares of some of these companies ;
- (3) there have been gross irregularities (which may in several respects and materials amount to illegalities) in the management of such companies including manipulation of the accounts and unjustified transfers and use of funds and assets ;
- (4) the moneys subscribed by the investing public were in a considerable measure used not in the interests of the companies concerned but contrary to their interest and for the ultimate personal benefit of those in control and/or management ; and
- (5) the investing public have as a result suffered considerable losses.

And whereas the Central Government is of the opinion that there should be a full inquiry, into these matters which are of definite public importance both by reason of the grave consequences which appear to have ensued to the investing public and also to determine such measures as may be deemed necessary in order to prevent a recurrence thereof.

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry Act (No. 60 of 1952), the Central Government hereby appoints a Commission of Inquiry consisting of the following persons, namely :—

Shri Justice S. R. Tendolkar, Judge of the High Court at Bombay—*Chairman.*

Shri N. R. Mody of Messrs. A. F. Ferguson Co., Chartered Accountant—*Member.*

Shri S. C. Chaudhuri, Commissioner of Income-tax—*Member.*

The Commission shall inquire into and report on and in respect of :

- (1) The administration of the affairs of the companies specified in the schedule hereto ;
- (2) the administration of the affairs of such other companies and firms as the Commission may during the course of its inquiry find to be companies or firms connected with the companies referred to in the schedule and whose affairs ought to be investigated and inquired into in connection with or arising out of the inquiry into the affairs of the companies specified in the schedule hereto ;
- (3) the nature and extent of the control, direct and indirect exercised over such companies and firms or any of them by the aforesaid Sarvashri Ramkrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Sriyans Prasad Jain, their relatives, employees and persons connected with them ;
- (4) the total amount of the subscription obtained from the investing public and the amount subscribed by the aforesaid persons and the extent to which the funds and assets thus obtained or acquired were misused, misapplied or misappropriated ;
- (5) the extent and nature of the investments by and/or loans to and/or the use of the funds or assets by and transfer of funds between the companies aforesaid ;
- (6) the consequences or results of such investments, loans transfers and/or use of funds and assets ;
- (7) the reasons or motives of such investments, loans transfers and use and whether there was any justification for the same and whether the same were made *bona fide* in the interests of the companies concerned ;
- (8) the extent of the losses suffered by the investing public, how far the losses were avoidable and what steps were taken by those in control and/or management to avoid the losses ;
- (9) the nature and extent of the personal gains made by any person or persons or any group or groups of persons whether herein named or not by reason of or through his or their connection with or control over any such company or companies ;
- (10) any irregularities, frauds or breaches of trust or action in disregard of honest commercial practices or contravention of any law (except contraventions in respect of which criminal proceedings are pending in a Court of Law) in respect of the

companies and firms whose affairs are investigated by the Commission which may come to the knowledge of the Commission (and the action which in the opinion of the Commission should be taken to act as a preventive in future cases).

- (11) the measures which in the opinion of the Commission are necessary in order to ensure in the future the due and proper administration of the funds and assets of companies and firms in the interests of the investing public.

SCHEDULE

1. Dalmia Jain Airways Ltd.
2. Dalmia Jain Aviation Ltd. (now known as Asia Udyog Ltd.).
3. Lahore Electric Supply Company Ltd. (now known as South Asia Industries Ltd.).
4. Sir Shapurji Broacha Mills Ltd.
5. Madhowji Dharamsi Manufacturing Company Ltd.
6. Allenberry & Co. Ltd.
7. Bharat Union Agencies Ltd.
8. Dalmia Cement and Paper Marketing Company Ltd. (now known as Delhi Glass Works Ltd.).
9. Vastra Vyavasaya Ltd.

Ordered that the Order be published in the Gazette of India for public information.

[No. F. 107(18)-INS/56]

H. M. PATEL,
Secretary.

VOLUME II
DISSOLUTION

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CHAPTER I

INTRODUCTORY

Among the matters into which we are directed to inquire under clause 2(3) of the Notification of 11-12-56, are the following,

“the nature and extent of the control, direct and indirect exercised over such companies and firms or any of them by the aforesaid Sarvasbhai Ramakrishna Dalmia, Jaidayal Dalmia, Shanti Prasad Jain, Shriyans Prasad Jain, their relatives, employees and persons connected with them.”

It is, therefore, necessary to see whether each one of them is associated with the control of the companies under investigation and if so, how, that is, whether as individuals or as members of an association or group, and whether directly or indirectly.

R. Dalmia, Shanti Prasad Jain and J. Dalmia said in their writ petitions to the High Court at Bombay that the first three exercised control over a large number of companies. In their application dated 1-3-60 J. Dalmia and Shanti Prasad Jain described themselves as the Dalmia Jain Group. We have adopted that nomenclature. But their case is that they existed as a group only up to May 1948 and that thereafter they dissolved themselves and ceased to exist or function as a group.

The question about the existence of the group and whether it existed as a group after 31-5-48, and how it exercised control over the companies with which we are concerned is, therefore, of importance. It will consequently be necessary for us to examine the question of partition or dissolution at length; partly because most of the questions that have to be answered under clause 2(3) of the Notification turn upon that, and partly because Shanti Prasad Jain and J. Dalmia have laid so much stress on it and claim that it is of vital importance so far as they are concerned. A very large part of their effort in this Inquiry has been concentrated on the question of partition.

We have used the term “partition” in places and in other places “dissolution”. The phrase that was used by Shanti Prasad Jain and J. Dalmia in their application of 1-3-60, and also in other places, was “separation of business interests and dissolution of the group”. But in the evidence, the witnesses, including Shanti Prasad Jain, spoke of a “partition”. This was also the term used in the arguments; so we have used both terms. But both are used in the same sense.

It is admitted by Shanti Prasad Jain and J. Dalmia that there was a Dalmia Jain group at one time; and this fact is not denied by anyone else.

According to Shanti Prasad Jain and J. Dalmia, the group had as its assets a piece of immovable property known as the Lauriya farm, and shares in a number of companies known as Dalmia Jain companies. They said that there was no joint ownership of these shares: each possessed his set of shares in his own rights; but they collectively used the powers that

this possession gave them. In this way they obtained joint control of the several companies which, to use Shanti Prasad Jain's words in another context, came under their "sphere of influence". This influence and control were naturally for the purpose of ultimate monetary gain to each member of the group.

Shanti Prasad Jain said in evidence that there was no legally binding ties between them and that no member could have compelled another to act in any given way except by moral persuasion. They were only bound by intangible ties of common interest. It was to their financial advantage to act as a group and pool their resources and power; and it was good business.

The case of Shanti Prasad Jain and J. Dalmia is that this group dissolved itself as from 31-5-48 and the assets of the group were divided on that day. The Lauriya farm was assigned to Shanti Prasad Jain and he paid each of the others his share of its value. The companies were also divided between them and there was an interchange of shares; each transferred to *the others the shares held by him in companies that were not allotted to him* and received from the others the shares in the companies that were allotted to him. According to them, all the scheduled companies and D.D.C. were allotted to R. Dalmia.

After that no member of the group took any interest or part in the management or control of any company that had not been allotted to him.

Shanti Prasad Jain said that this was just an arrangement between them. He explained however that implementation of the agreement of partition took time because of the mechanism of transfer. For that reason their association with some of the companies that had not been allotted to them continued in name after the partition but not in fact. But this continuance of association was only for the purpose of giving effect to the mechanism of transfer. According to his counsel this had no legally binding force.

CHAPTER II

COMPOSITION AND FUNCTIONING OF THE GROUP

We will now see how the group is said to have functioned.

Shanti Prasad Jain's description of the group indicates that the association between its members was of a very nebulous kind. It could mean all things or nothing just as it suited them. Nevertheless it is obvious that such a large organisation of companies and property could not have been managed without some systematic arrangement or understanding. The Lauriya farm alone was bought for Rs. 3 lacs, and the total value of the concerns disclosed in Ex. S. 75, the list that is said to have been drawn up at the partition, would run into several crores; nor was this a complete list. Shanti Prasad Jain admitted that there were other concerns that belonged to the group which were also divided but which are not mentioned in this list. He said that they were only minor companies so they did not bother to enumerate them. But he admitted that there was what he called an understanding between the members about their respective functions. At one place he called this a "decorum" between them. His explanations about this were not always consistent, but at one stage of his deposition he explained the understanding in this way. It was pointed out to him that the Dalmia Jain Group had a lot of companies under their control and that those companies invested their funds. He was asked who made the decisions about these investments. His reply was,

"By and large, when it was a matter of major investments, then it was the decision of R. Dalmia."

He explained that technically the directors made the immediate decision but they did as R. Dalmia decided.

He was then asked which of the three members of the group made the decisions regarding any particular company, that is, were the companies divided among them and allotted to one or other member of the group for the purpose of making these decisions. His answer was,

"It will depend upon the nature of the investment. Once the question of placing order of the nature of 4 cement plants which may involve a large commitment it will be definitely consulted by all of us. If it is a matter of placing a commitment of some repairs, alterations etc., which may be of the order of 1, 2, or 3 million rupees, and that means normally the nature that the company is carrying on, that decision will be taken by the person who is conducting the affairs of the said company. If it is a matter that you have termed the inter-company investments, then it will be a matter for decision by R. Dalmia."

In another place he said that the only thing that happened before the partition was that

"We had a certain understanding. After that date two of us especially carried on our operations in a manner which we

liked best. That was the only difference that has taken place of this separation. Otherwise in law nothing has happened. The funds were there, there were the directors and everything was going on."

He said that it was only an "understanding" and so there was no need to reduce all this to writing.

In another place he said,

"There was a sort of decorum among the three of us. Pitaji (R. Dalmia) was the seniormost, then Chachaji (J. Dalmia) and then myself. This decorum was recognised and was applicable in the following manner. If in any company there were two of us on the board, the senior among us will be the chairman of that board. The views of the senior in case of slightest variation on any specific subject will generally prevail unless the senior member alters his views to the views held by his junior."

Another description of the functioning of the group was this,

"By 1945-46 there were a large number of industrial units in the organisation. These industrial units required constant attention for proper and efficient functioning. It would not be possible that each of us should look to the same business nor was it desirable. The members of the Dalmia Jain group were giving attention individually to different units and generally the affairs of one individual enterprise were looked after by one member of the group and the other member only came to know of the activities when he was consulted."

In another passage he said,

"We were all owners of our own. There is no question of giving in, giving out. In that family atmosphere that we were working we always thought as we may own ours. We held R. Dalmia in that understanding as God."

Now R. Dalmia was not a shareholder in all the companies, because, if Shanti Prasad Jain is to be believed, the group as such had no shareholdings: each member held the shares in a given company individually in his own right. But despite that the ultimate source of control and power was R. Dalmia and he exercised his control through one or other members of the group in cases where he had no shares in the concern.

R. Dalmia was not a director in all the companies in which he held no shares, nor was he connected with the managing agency in all cases. Therefore, in cases where he did not appear on paper he acted as a sort of hidden hand, well screened behind a network of persons who were the instruments through whom his will and authority were enforced on the companies.

This was a convenient method to evade responsibility when things went wrong or shady transactions were afoot. We will deal with this later. But it is necessary to bear this in mind in order to test the story of dissolution. As we have said, the group as such is said not to have possessed any property or assets in the legal sense except the Lauriya farm. All that they had as a group was an intangible power that Shanti Prasad Jain called a "sphere of influence" or "power of control". This was exercised through

the instrumentality of the shares that each held separately and individually in different companies but which they pooled when it came to a matter of voting. At the dissolution, the division of this "sphere of influence" was also effected through the instrumentality of shares, namely, by an interchange of shareholdings.

If this is true then all that the group can be said to have possessed (apart from the Lauriya farm) was something intangible. The legal title to whatever of its "assets" was tangible did not lie in the group but vested separately in its individual members as their separate and individual properties. The Lauriya farm was the only exception.

But here again there was a distinction. The case of Shanti Prasad Jain is that all their individual properties were not at the disposal of the group. In addition to the group "assets", namely, the Lauriya farm and the shares of companies that were placed under its "sphere of influence", each individual member also had large properties and assets of his own which had no connection with the group "assets". So, though the legal title to each item of property resided in one or other members individually there was a notional division among themselves of what belonged to the group and what might be called their separate properties with which the group had no concern.

We will now examine how the items of property, namely shares, that were regarded as group "assets" were purchased. When we asked Shanti Prasad Jain who supplied the funds he replied that each member bought the shares out of his own separate and individual moneys. When we sought to probe into the truth of this and asked him to disclose the source of the funds he took refuge under what we might call a plea of privilege. He said that an inquiry into his personal affairs unrelated to the scheduled companies was outside the scope of our inquiry and so refused to answer. It is true up to a point that we are not entitled to investigate into his personal affairs except in so far as they relate to the scheduled companies, but the issue of dissolution was raised by J. Dalmia and him and the burden was on them to prove it.

Mr. Misra argued that it was for the Commission to assert the exact nature of the association it has in mind when it speaks of a group in its statements of matters and then to prove it. He argued that simply because his client admitted that the three members of the group acted as a group in the manner described by him up to 31-5-48 there was no presumption that it continued to act collectively at any point of time after that; also, as the Commission has not specified the nature of the group in its statements of matters it cannot assign to it any particular character other than that which his client has admitted, and that only up to 31-5-48.

We do not agree. Even if no issue of dissolution had been raised, it would still be for the Commission to establish, either by direct evidence or as a reasonable inference from facts that are proved or are beyond reasonable doubt, the extent of the responsibility of each member for each of the allegations that have been made in the various statements of matters.

But once it is proved that the group at one time exercised "control" over the scheduled companies for the ultimate purpose of individual benefit and again to the members of the group, and once it is seen that the controlling interest in the scheduled companies resided in one or more members of

the group, and once there is evidence to indicate connection of any particular member in a given company or transaction up to a particular date, then, in the absence of proof of dissolution it becomes reasonable to infer that the connection was as a member of the group for group purposes, namely, ultimate individual benefit and a gain for its members.

This is particularly so in view of the conduct of the various members and companies—conduct that leads to the drawing of certain inferences against them. We will deal with this in detail when dealing with the various companies. At the moment the point we are making is that the burden of proving dissolution is on those who allege it.

Now if the burden of proving dissolution is on Shanti Prasad Jain and he chooses to assert that certain named companies are within the "sphere of influence" of the group and that the shares in them, even though they vested in members of the group separately, were regarded as group "assets" and that at a later stage these "assets" were divided and "assigned" to the individual members of the group, it at once becomes relevant to probe into the financial aspects of these various matters.

Shanti Prasad Jain's case is that despite the absence of legal title in the group as a group and despite all the looseness of their association it was at base a business arrangement, however much "family love and affection" might have been a contributing factor. The purpose of the association was individual benefit and gain. But the truth of such a story cannot be tested without close inquiry into the financial aspects of this association; and if Shanti Prasad Jain chooses to withhold knowledge and material in his possession relating to the matter of dissolution it becomes legitimate to draw inferences against him. He was warned about this in the course of his cross-examination.

CHAPTER III

EFFECTIVE DATE OF DISSOLUTION

We will now look into what we will call the effective date of the dissolution. We were told that though the 31st of May 1948 was the effective date nothing actually happened on that day. It was merely the date from which it was agreed in April that the dissolution should take effect. The actual decision to separate was reached in April.

An agreement of this kind, where the decision to separate is reached on one date and the date from which it is to take effect is another can be brought about in at least two different ways.

- A. The operative decision to separate can be reached on, say the 1st of February, while the date from which it is to take effect can be postponed to, say, the 1st of June; or
- B. The operative decision to separate can be reached on, say, the 1st of December and it can be agreed that the decision will have retrospective effect and that the separation will be deemed to have taken effect on some earlier date, say June 1st.

The distinction is of importance because in case A the parties to the agreement will have continued joint till the effective date of separation (June 1st) despite the fact that the agreement to separate was reached at an earlier date (1st February). In case B the parties will in fact have continued joint down to the date of the agreement to separate (1st December) though for purposes of their own accounting the effective date has been artificially pushed back to an earlier date (1st June). Also, in this case, though they can adjust their own affairs and finances *inter se* as they please they cannot wipe out the past for all purposes, especially when it relates to outside affairs and third parties.

There is nothing wrong in either of these kinds of agreement unless of course an element of fraud creeps in. But the consequences that flow from them are different. It will therefore be necessary for us to determine which of these two methods was employed in the present case.

The case on which Shanti Prasad Jain and J. Dalmia base is illustration A above. They say that the decision to separate was reached about the middle of April 1948, somewhere between the 13th and the 20th. In his written statements (which are the same as that of J. Dalmia) Shanti Prasad Jain said that there was a complete separation as from 31-5-48 and he referred us to his application of 1-3-60 for particulars. In those particulars he first set out the differences between the members of the group that led to the dissolution and then said in para 4(c) of his application,

"Matters came to a head towards the middle of April 1948.... It was *then* decided to effect a complete separation of business interests among Shri R. Dalmia, Shri J. Dalmia and the applicant.